DEVELOPMENT DEPARTMENT

G.O. No. 725, 16th February 1951

Labour—Disputes—Dispute between the workers and the management of the Commonwealth Tile Factory, Kudroli, Mangalore—Award of the Industrial Tribunal, Coimbatore—Published.

READ—the following papers :—

I

G.O. Ms. No. 1315, Development, dated 31st March 1950.

II

From the Industrial Tribunal, Coimbatore, dated 9th February 1951, *No. I.D.* 8 of 1950.

BEFORE THE INDUSTRIAL TRIBUNAL, COIMBATORE.

PRESENT :

SRI P. V. KRISHNASWAMI, B.A., B.L.,
Industrial Tribunal.

INDUSTRIAL DISPUTE No. 8 OF 1950.

[In the matter of the dispute between the workers and the Management of the Commonwealth Tile Factory, Kudroli, Mangalore (vide G.O. Ms. No. 1315, Development, dated 31st March 1950.)]

Messrs. M. S. Menon, M.A., Bar.-at-Law and G. B. Pai, M.A., B.L., Advocates, Ernakulam—*For the management.*

SRI B. S. Bhaskar Rai, B.A., B.L., Advocate and President, Commonwealth Tile Factory Workers' Union, Kudroli, Mangalore—*For the workers.*

AWARD.

Reference to adjudicate whether the dismissal of Sri Omaya Poojari and Sri Daniel Prabhakar by their employer, the Commonwealth Tile Factory, Kudroli, Mangalore, was justified and if not, whether they should be reinstated.

1. The two workers are represented by their Union whose President Sri Bhaskar Rai, Advocate, has appeared for them now as at all earlier stages.

2. Both the parties were asked to file a full and clear statement of their case by 26th April 1950. On 24th April 1950, the President of the Union filed the statement on behalf of the Workers' Union and it is safe to say that it mentions nothing with regard to the impropriety, illegality or unjustifiability of the dismissals of the two employees in question. It runs into four pages and many paragraphs dealing mainly with the reinstatement of some other workmen dismissed before a strike, the wages for the strike period, an increase in the basic pay and dearness allowance, bonus, amenities to women workers, the difficulties of sweepers, the inconvenience felt at the racks and at the fire departments, skilled workers, clay stackers and holidays. It makes no reference whatever to these two employees in particular.

3. The employer's counsel obtained an extension of time to file his written statement. It is dated 9th May 1950, and urges that the two workmen were dismissed with effect from 14th October 1949 for wilful insubordination and refusal to carry out the lawful and reasonable orders of the Factory Manager; they had been given a charge-sheet in writing and afforded an opportunity to explain. They had been suspended on a prior occasion for misconduct and the same was taken into consideration in awarding a punishment to them, viz., dismissal. It is imperative in the interests of discipline inside the factory.

4. My learned Predecessor framed the following issue and communicated it to both parties :—

(1) Whether the two workmen, viz., Sri Omaya Poojari and Sri Daniel Prabhakar were dismissed on just and proper grounds and after due enquiry and if not should they be reinstated or given any other relief?

5. The advocates for the employer urged by a letter, dated 22nd May 1950, for the deletion from the issue of the words "if not whether they should be reinstated". On 3rd June 1950, the President of the Union wrote that the Workers' Union had not received till then the terms of the reference to the Tribunal and that "if the terms of the reference is only regarding the dismissal of two workers, the adjudication will be of little use to them." They had represented to the Labour Commissioner that their grievances should be redressed in the matter of wages, that a copy of the terms of reference should be forwarded to them, that issues should be framed regarding increase in basic wages, etc., that the matter should be taken up with Government regarding the terms of the reference. A reply was sent that issues can be and have been framed only on the terms of the reference and at best can be only germane to the points involved therein. No further statement was filed nor was leave asked therefor.

6. On 8th July 1950, the Tribunal received from the President of the Workers' Union a copy of a letter, dated 5th July 1950, addressed by him to the Commissioner of Labour. It complained that though he had laid specific stress on the question of increase of wages, to bring it on a par with the wages in other factories in Mangalore, the Commissioner of Labour seemed "to have referred only the matter of dismissal of two workers to the Industrial Tribunal." He added, "I am afraid we cannot be a party to such references and I have already intimated the facts to the Tribunal with copies to you and the Hon'ble Minister for Labour. Otherwise we will be wasting unnecessarily State's money on the present reference."

7. Notwithstanding all the foregoing the two employees have by their counsel participated now in the enquiry, cross-examined the four witnesses for the employer and have examined themselves.

8. The employer relies upon Exhibits M-1 to M-14 while the workmen rely on Exhibits W-1 to W-5. Exhibit M-9, dated 13th October 1949, from Mr. Hopkins (management's witness No. 4) to Mr. Fowler, the then General Group Manager, who has since retired from service sets out the incidents leading to the dismissal of these two workmen. It states that No. 1 press had not started work at 8 o'clock that morning due to pallets being not available that morning. To these two tile receivers of No. 1 press, it was pointed out that a big stock of pallets had accumulated at the press immediately opposite and that the same could be used. After some hesitation the workmen had the pallets transferred but 15 minutes production time was lost. Mr. Hopkins then informed these two workmen through the head fitter, Benjamin Maben (management's witness No. 2) that he wished to see them in his office at their break time, 9-30 a.m. Exhibit M-9 continues "they replied to the effect that if I wanted to convey anything to them I should do so through their vakil presumably Bhaskar Rai now the Union Secretary. At 9-30 I sent out for them but again they refused to come to the office giving the same reason as before." These two workers had given trouble previously and had been suspended for three days in May 1949 with a final warning in writing. Mr. Hopkins recommended adoption of strong and stern measures to suppress such acts of insubordination lest they should assume impossible proportions. He attributed the non-co-operative attitude existing amongst the press room people to their chagrin at the installation of mechanical belt conveyers to carry pallets thereby minimizing human labour and head-loads.

9. Thus addressed by Exhibit M-9, Mr. Fowler, the Group Manager addressed the very next day, 14th October 1949, Mr. Kruger who was acting General Manager at Kozhikode during the absence of Mr. Burnett (M.W. 1) on leave. Exhibit M-4 taken with the other correspondence to be adverted to explains what took place on 14th October 1949 and after. It refers to instructions by telephone by Mr. Kruger to Mr. Fowler on the 13th October agreeably to which Mr. Fowler issued on 14th October 1949, Exhibits W-1 and W-2 to Omaya Poojari and Daniel Prabhakar informing them that it had been brought to his notice that each of them had been guilty of wilful insubordination and disobedience to lawful orders of their Manager on 13th October 1949 and that they were thereby given an opportunity to explain their case to Mr. Fowler at 4 p.m. that day at his office.

10. At 4 p.m. both these workmen appeared before Mr. Fowler and he took down their joint explanation referred to and set out in Exhibit M-4 in detail. They told him that No. 1 press had not worked on the afternoon of 12th October

and when they came to work on 13th morning, there were no pallets to work No. 1 press. The Manager (Mr. Hopkins) instructed them to get pallets from No. 4 press where they were available. They got them for No. 1 press. Omaya Poojari first told Mr. Fowler that this was at 8-15 a.m. but was corrected by Daniel Prabhakar into 7-45. They took about 30 pallets but did not start work. He does not know the time but it was before 8 o'clock. He was told by Mr. Hopkins through the head fitter as interpreter to come to the office at 9-30 a.m. but they replied they will not do so since some time earlier they had told the press maistri that they wanted to see the Manager; the Manager Mr. Hopkins had then replied that there was no necessity. They then had wished to see the Manager in regard to the working at the mechanical conveyors and at the time of their request to see the Manager work had been stopped at the factory. At 9-30 a.m. on the 13th, they were again asked by the head fitter to see the Manager and again they refused for the same reason as before. They made a final statement that the vakil who is in charge of the Union may be asked about them. Finally they both refused to sign their explanation which was however attested by the interpreter (head clerk) Karkada, M.W. 3, and the head maistri B. Mohamed. Mr. Fowler himself has written the original entirely in his own handwriting. He thereupon considered that there was sufficient justification to order their dismissal relying upon rule 22 (*a*) of their Standing Orders and therefore passed an order of dismissal evidenced by Exhibits M-7 and M-8 on the 14th October 1949. The original orders of dismissal were handed over to them and the terms thereof were interpreted by the head clerk in the presence of the head maistri and Mr. Hopkins. Mr. Maben, the head fitter has also now been examined with regard to the incidents on the morning of the 13th and corroborates Mr. Hopkins and Exhibit M-9.

11. Sri Maben as M.W. 2 proves his statement, Exhibit M-3, dated 14th October 1949. Maben states there that when Mr. Hopkins directed the tile receivers, viz., Omaya Poojari and Daniel Prabhakar to arrange to take the pallets from No. 4 press they took the whole thing as a joke and did not act. Mr. Hopkins directs Sri Maben to inform these two workmen to see him in his office at 9-30 a.m. but when Sri Maben told them so they replied "the Manager need not talk to us and if he wants anything, he can do so through our vakil." At 9-30 a.m. when he asked these workmen to go to the Manager they gave the same reply.

12. It is necessary now to advert to certain prior incidents which find reference in these letters and have been now spoken to in detail by Mr. Hopkins. He installed mechanical conveyers in that factory in the first week of September 1949 and the labourers were antogonistic to such an innovation and stopped work on 3rd September 1949. A deputation wanted to see him but he refused to receive the deputation since the Standing Orders of the factory did not permit an interview of that nature when men had struck work. Since on that occasion, Mr. Hopkins refused to receive the men among whom were these Omaya Poojari and Daniel Prabhakar, the incident of 13th October more than a month later arose. They refused to remove the pallets as if to express their derision at the mechanical conveyor. They refused to obey the call of the Manager to his office because the Manager had on 3rd September 1949 refused to receive a deputation of theirs.

13. After this dismissal on 14th October 1949, Mr. Bhaskar Rai would appear to have received a letter, dated 25th November 1949, from the General Manager and it is referred to in Exhibit M-1 wherein the Labour Officer, Kozhikode, on 30th November 1949, requested the General Manager to let him know the circumstances under which the two workers were removed from service. The General Manager's reply, dated 30th November 1949, to the Labour Officer is Exhibit M-2. Subsequent negotiations failed since the employer felt that any reinstatement of these men would grossly impair discipline and output.

14. On 24th December 1949, Mr. Bhaskar Rai, on behalf of the Union gave the General Manager a notice of strike setting out a demand for redress over 26 items the first being the dismissal of these two workmen. Exhibit W-5 is the reply of the General Manager refusing to restore these two men and replying to all the other items. The question is whether in view of the foregoing these two workmen were dismissed illegally.

15. Sri Omaya Poojari as W.W. 1 has admitted that because Mr. Hopkins had refused to receive the workmen ten days earlier, he and Prabhakar refused to see him on the date in question. Daniel Prabhakar as W.W. 2 has also admitted that Mr. Hopkins had refused to receive them earlier when they wanted to see him to express their grievances and that is one of the reasons why he did not obey Mr. Hopkin's call to the office on 13th October 1949 though he knew that according to the rules he was bound to comply.

16. If the matter stood there, there is absolutely no case for the workmen. To order their reinstatement would be against all interests and would be upholding contumacious insolence and impudent insubordination. The matter however has been complicated by new pleas being advanced for the first time after this enquiry began. Comment has been already made upon the statement filed on behalf of these two workmen in this case. It does not refer to any of the circumstances leading to their dismissal, to offer any explanation or excuse. In such circumstances, normally in a Court of Law, they would not be permitted to put forward any case not specifically pleaded but allowing some latitude for their alleged illiteracy and their allegations that they had entrusted their entire case to their President and counsel. I permitted them to state whatever they wanted to urge. The result had been that they made personal allegations against Mr. Hopkins to the effect that he used to treat them in an unhuman fashion threatening them with a stick. During his deposition Omaya Poojari has stated that on 13th October 1949 he was pushed by Mr. Hopkins while Daniel Prabhakar who did not corroborate Omaya Poojari has added that Mr. Hopkins waved a stick or cane at him. It is significant that at no time earlier during the history of these disputes was this obvious afterthought of a story put forward. When the President of their Union issued a notice of strike he did not refer to this. When these men were examined by Mr. Fowler on the very next day they did not tell him anything about these matters though they concede that Mr. Fowler is a good man against whom they have nothing to urge. Yet again when the Labour Officer went into these matters they did not put forward this story of Mr. Hopkins going about with a stick to frighten these men. This concoction has to be dismissed straightaway as ridiculous.

17. Again it had been suggested during trial that the head fitter Sri Maben did not interpret properly what Mr. Hopkins told the workmen and vice versa. Similar aspersions have been made against Mr. Fowler's record of the statement of these men on 14th October 1949. These aspersions had not been put forward on any earlier stage during these disputes and are not entitled to any acceptance. Mr. Hopkins has denied that he went about with a stick to wave the same at his workmen or to indicate any semblance of violence towards them. To the same effect is the evidence of Sri Maben the head fitter and Sri Karkada, the head clerk. In fact it is obvious that it had been realized during the earlier stages following this reference that these two workmen who have found employment elsewhere had no case whatever, because their President's letter to this Tribunal and to the Labour Commissioner would justify no other conclusion.

18. For all the foregoing reasons I hold and find that these two workmen were rightly dismissed on just and proper grounds and after due enquiry and that the same is fully justified. No question of reinstatement or other relief arises.

Coimbatore,
3rd February 1951.

P. V. KRISHNASWAMI,
Industrial Tribunal.

Order—No. 725, Development, dated 16th February 1951.

Whereas the award of the Industrial Tribunal, Coimbatore, in respect of the industrial dispute between the workers and the management of the Commonwealth Tile Factory, Kudroli, Mangalore, has been received;

Now, therefore, in exercise of the powers conferred by section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), His Excellency the Governor of Madras hereby directs that the said award be published in the *Fort St. George Gazette.*

(By order of His Excellency the Governor)

J. M. LOBO PRABHU,
Secretary to Government.

To the Superintendent, Government Press, for publication.
" Commissioner of Labour (20 copies).
" Industrial Tribunal, Coimbatore.
" Management of the Commonwealth Tile Factory, Kudroli, Mangalore.
" Secretary, Commonwealth Tile Factory Workers' Union, Kudroli, Mangalore.
" District Magistrate of South Kanara.

To the Industrial Tribunal (I), High Court Buildings, Madras.
" Industrial Tribunal (II), Block No. XIV, Fort St. George, Madras.
" Industrial Tribunal, Madurai.
" Industrial Tribunal, Vijayavada at Guntur.
" Secretary to the Government of India, Ministry of Labour, New Delhi (10 copies).

To the Secretary to the Government of Bihar, Labour Department, Patna.
" Secretary to the Government of Bombay, Labour and Housing Department, Bombay.
" Secretary to the Government of West Bengal, Labour Department, Calcutta (2 copies).
" Secretary to the Government of Orissa, Commerce and Labour Department, Cuttack (3 copies).
" Secretary to the Government of Uttar Pradesh, Labour Department, Lucknow (2 copies).
" Secretary to the Government of Madhya Pradesh, Labour Department, Nagpur (3 copies).
" Chief Secretary to the Government of Assam, General and Judicial Department, Shillong (3 copies).
" Commissioner of Labour and Employment, Patna.
" Chairman, Industrial Tribunal, Bihar, Jamshedpur.
" Deputy Commissioner of Labour (Information), Civil Secretariat Buildings, Fort, Bombay.
" Registrar of Industrial Courts, Bombay (2 copies).
" Commissioner of Labour, West Bengal, Calcutta.
" Labour Commissioner, Uttar Pradesh, P.B. No. 220, Kanpur.
" Industrial Tribunal, Punjab, Bhandrath Road, Jullundur City.
" Labour Commissioner, Assam, Shillong.
" Chief Commissioner, Delhi (2 copies).
" Labour Commissioner, Punjab, Seth Pochardas Buildings, Nicholson Road, Ambala Cantonment.
" Director of Industries and Labour, Delhi.
" Chief Commissioner, Ajmer (3 copies).
" Chief Commissioner, Coorg (3 copies).

To the Chief Secretary to the Government of Hyderabad, Hyderabad (Deccan) (3 copies).
" the Chief Secretary to the Government of Mysore, Bangalore (3 copies).
" the Chief Secretary to the Government of Sourashtra, Rajkot (3 copies).
" the Chief Secretary to the Government of Travancore and Cochin, Trivandrum (5 copies).
" the Chief Secretary to the Government of Rajasthan, Jaipur (3 copies).
" the Chief Secretary, Patiala and East Punjab States Union Government, Patiala (3 copies).
" the Principal Secretary, Government of Jammu and Kashmir, Srinagar (3 copies).
" the Registrar, Labour Appellate Tribunal, City Ice Building, 4th Flour, 298, Bazaar Gate Street, Bombay (6 copies).
" Sri R. Venkataraman, M.A., B.L., No. 1/174, High Road, Royapetta, Madras.
" the Regional Labour Commissioner (Central), First Floor, Flat No. 12, Khaleeli Mansions, Mount Road, Madras.
" the Director-General, International Labour Organization, Geneva.
" the Regional Director of Resettlement and Employment, Cathedral P.O., Madras.
" the Chief Commissioner, Kutch, Bhuj (3 copies).
" the Chief Commissioner, Bhopal, Bhopal (3 copies).
" the Chief Commissioner, Bilaspur (Simla Hills) (3 copies).
" the Chief Commissioner, Vindhya Pradesh, Reva (3 copies).
" the Chief Commissioner, Manipur, Imphal (3 copies).
" the Chief Commissioner, Tripura, Agartala (3 copies).
" the Chief Commissioner, Himachal Pradesh, Simla (3 copies).

Forwarded to the

(By order)

Superintendent.

DEVELOPMENT DEPARTMENT

G.O. No. 725, 16th February 1951

Labour—Disputes—Dispute between the workers and the management of the Commonwealth Tile Factory, Kudroli, Mangalore—Award of the Industrial Tribunal, Coimbatore—Published.

READ—the following papers :—

I

G.O. Ms. No. 1315, Development, dated 31st March 1950.

II

From the Industrial Tribunal, Coimbatore, dated 9th February 1951, *No. I.D.* 8 of 1950.

BEFORE THE INDUSTRIAL TRIBUNAL, COIMBATORE.

PRESENT :

SRI P. V. KRISHNASWAMI, B.A., B.L.,
Industrial Tribunal.

INDUSTRIAL DISPUTE No. 8 OF 1950.

[In the matter of the dispute between the workers and the Management of the Commonwealth Tile Factory, Kudroli, Mangalore (vide G.O. Ms. No. 1315, Development, dated 31st March 1950.)]

Messrs. M. S. Menon, M.A., Bar.-at-Law and G. B. Pai, M.A., B.L., Advocates, Ernakulam—*For the management.*

SRI B. S. Bhaskar Rai, B.A., B.L., Advocate and President, Commonwealth Tile Factory Workers' Union, Kudroli, Mangalore—*For the workers.*

AWARD.

Reference to adjudicate whether the dismissal of Sri Omaya Poojari and Sri Daniel Prabhakar by their employer, the Commonwealth Tile Factory, Kudroli, Mangalore, was justified and if not, whether they should be reinstated.

1. The two workers are represented by their Union whose President Sri Bhaskar Rai, Advocate, has appeared for them now as at all earlier stages.

2. Both the parties were asked to file a full and clear statement of their case by 26th April 1950. On 24th April 1950, the President of the Union filed the statement on behalf of the Workers' Union and it is safe to say that it mentions nothing with regard to the impropriety, illegality or unjustifiability of the dismissals of the two employees in question. It runs into four pages and many paragraphs dealing mainly with the reinstatement of some other workmen dismissed before a strike, the wages for the strike period, an increase in the basic pay and dearness allowance, bonus, amenities to women workers, the difficulties of sweepers, the inconvenience felt at the racks and at the fire departments, skilled workers, clay stackers and holidays. It makes no reference whatever to these two employees in particular.

3. The employer's counsel obtained an extension of time to file his written statement. It is dated 9th May 1950, and urges that the two workmen were dismissed with effect from 14th October 1949 for wilful insubordination and refusal to carry out the lawful and reasonable orders of the Factory Manager; they had been given a charge-sheet in writing and afforded an opportunity to explain. They had been suspended on a prior occasion for misconduct and the same was taken into consideration in awarding a punishment to them, viz., dismissal. It is imperative in the interests of discipline inside the factory.

4. My learned Predecessor framed the following issue and communicated it to both parties :—

(1) Whether the two workmen, viz., Sri Omaya Poojari and Sri Daniel Prabhakar were dismissed on just and proper grounds and after due enquiry and if not should they be reinstated or given any other relief?

5. The advocates for the employer urged by a letter, dated 22nd May 1950, for the deletion from the issue of the words "if not whether they should be reinstated". On 3rd June 1950, the President of the Union wrote that the Workers' Union had not received till then the terms of the reference to the Tribunal and that "if the terms of the reference is only regarding the dismissal of two workers, the adjudication will be of little use to them." They had represented to the Labour Commissioner that their grievances should be redressed in the matter of wages, that a copy of the terms of reference should be forwarded to them, that issues should be framed regarding increase in basic wages, etc., that the matter should be taken up with Government regarding the terms of the reference. A reply was sent that issues can be and have been framed only on the terms of the reference and at best can be only germane to the points involved therein. No further statement was filed nor was leave asked therefor.

6. On 8th July 1950, the Tribunal received from the President of the Workers' Union a copy of a letter, dated 5th July 1950, addressed by him to the Commissioner of Labour. It complained that though he had laid specific stress on the question of increase of wages, to bring it on a par with the wages in other factories in Mangalore, the Commissioner of Labour seemed "to have referred only the matter of dismissal of two workers to the Industrial Tribunal." He added, "I am afraid we cannot be a party to such references and I have already intimated the facts to the Tribunal with copies to you and the Hon'ble Minister for Labour. Otherwise we will be wasting unnecessarily State's money on the present reference."

7. Notwithstanding all the foregoing the two employees have by their counsel participated now in the enquiry, cross-examined the four witnesses for the employer and have examined themselves.

8. The employer relies upon Exhibits M-1 to M-14 while the workmen rely on Exhibits W-1 to W-5. Exhibit M-9, dated 13th October 1949, from Mr. Hopkins (management's witness No. 4) to Mr. Fowler, the then General Group Manager, who has since retired from service sets out the incidents leading to the dismissal of these two workmen. It states that No. 1 press had not started work at 8 o'clock that morning due to pallets being not available that morning. To these two tile receivers of No. 1 press, it was pointed out that a big stock of pallets had accumulated at the press immediately opposite and that the same could be used. After some hesitation the workmen had the pallets transferred but 15 minutes production time was lost. Mr. Hopkins then informed these two workmen through the head fitter, Benjamin Mabon (management's witness No. 2) that he wished to see them in his office at their break time, 9-30 a.m. Exhibit M-9 continues "they replied to the effect that if I wanted to convey anything to them I should do so through their vakil presumably Bhaskar Rai now the Union Secretary. At 9-30 I sent out for them but again they refused to come to the office giving the same reason as before." These two workers had given trouble previously and had been suspended for three days in May 1949 with a final warning in writing. Mr. Hopkins recommended adoption of strong and stern measures to suppress such acts of insubordination lest they should assume impossible proportions. He attributed the non-co-operative attitude existing amongst the press room people to their chagrin at the installation of mechanical belt conveyers to carry pallets thereby minimizing human labour and head-loads.

9. Thus addressed by Exhibit M-9, Mr. Fowler, the Group Manager addressed the very next day, 14th October 1949, Mr. Kruger who was acting General Manager at Kozhikode during the absence of Mr. Burnett (M.W. 1) on leave. Exhibit M-4 taken with the other correspondence to be adverted to explains what took place on 14th October 1949 and after. It refers to instructions by telephone by Mr. Kruger to Mr. Fowler on the 13th October agreeably to which Mr. Fowler issued on 14th October 1949, Exhibits W-1 and W-2 to Omaya Poojari and Daniel Prabhakar informing them that it had been brought to his notice that each of them had been guilty of wilful insubordination and disobedience to lawful orders of their Manager on 13th October 1949 and that they were thereby given an opportunity to explain their case to Mr. Fowler at 4 p.m. that day at his office.

10. At 4 p.m. both these workmen appeared before Mr. Fowler and he took down their joint explanation referred to and set out in Exhibit M-4 in detail. They told him that No. 1 press had not worked on the afternoon of 12th October

and when they came to work on 13th morning, there were no pallets to work No. 1 press. The Manager (Mr. Hopkins) instructed them to get pallets from No. 4 press where they were available. They got them for No. 1 press. Omaya Poojari first told Mr. Fowler that this was at 8-15 a.m. but was corrected by Daniel Prabhakar into 7-45. They took about 30 pallets but did not start work. He does not know the time but it was before 8 o'clock. He was told by Mr. Hopkins through the head fitter as interpreter to come to the office at 9-30 a.m. but they replied they will not do so since some time earlier they had told the press maistri that they wanted to see the Manager; the Manager Mr. Hopkins had then replied that there was no necessity. They then had wished to see the Manager in regard to the working at the mechanical conveyors and at the time of their request to see the Manager work had been stopped at the factory. At 9-30 a.m. on the 13th, they were again asked by the head fitter to see the Manager and again they refused for the same reason as before. They made a final statement that the vakil who is in charge of the Union may be asked about them. Finally they both refused to sign their explanation which was however attested by the interpreter (head clerk) Karkada, M.W. 3, and the head maistri B. Mohamed. Mr. Fowler himself has written the original entirely in his own handwriting. He thereupon considered that there was sufficient justification to order their dismissal relying upon rule 22 (*a*) of their Standing Orders and therefore passed an order of dismissal evidenced by Exhibits M-7 and M-8 on the 14th October 1949. The original orders of dismissal were handed over to them and the terms thereof were interpreted by the head clerk in the presence of the head maistri and Mr. Hopkins. Mr. Maben, the head fitter has also now been examined with regard to the incidents on the morning of the 13th and corroborates Mr. Hopkins and Exhibit M-9.

11. Sri Maben as M.W. 2 proves his statement, Exhibit M-3, dated 14th October 1949. Maben states there that when Mr. Hopkins directed the tile receivers, viz., Omaya Poojari and Daniel Prabhakar to arrange to take the pallets from No. 4 press they took the whole thing as a joke and did not act. Mr. Hopkins directs Sri Maben to inform these two workmen to see him in his office at 9-30 a.m. but when Sri Maben told them so they replied "the Manager need not talk to us and if he wants anything, he can do so through our vakil." At 9-30 a.m. when he asked these workmen to go to the Manager they gave the same reply.

12. It is necessary now to advert to certain prior incidents which find reference in these letters and have been now spoken to in detail by Mr. Hopkins. He installed mechanical conveyers in that factory in the first week of September 1949 and the labourers were antogonistic to such an innovation and stopped work on 3rd September 1949. A deputation wanted to see him but he refused to receive the deputation since the Standing Orders of the factory did not permit an interview of that nature when men had struck work. Since on that occasion, Mr. Hopkins refused to receive the men among whom were these Omaya Poojari and Daniel Prabhakar, the incident of 13th October more than a month later arose. They refused to remove the pallets as if to express their derision at the mechanical conveyor. They refused to obey the call of the Manager to his office because the Manager had on 3rd September 1949 refused to receive a deputation of theirs.

13. After this dismissal on 14th October 1949, Mr. Bhaskar Rai would appear to have received a letter, dated 25th November 1949, from the General Manager and it is referred to in Exhibit M-1 wherein the Labour Officer, Kozhikode, on 30th November 1949, requested the General Manager to let him know the circumstances under which the two workers were removed from service. The General Manager's reply, dated 30th November 1949, to the Labour Officer is Exhibit M-2. Subsequent negotiations failed since the employer felt that any reinstatement of these men would grossly impair discipline and output.

14. On 24th December 1949, Mr. Bhaskar Rai, on behalf of the Union gave the General Manager a notice of strike setting out a demand for redress over 26 items the first being the dismissal of these two workmen. Exhibit W-5 is the reply of the General Manager refusing to restore these two men and replying to all the other items. The question is whether in view of the foregoing these two workmen were dismissed illegally.

15. Sri Omaya Poojari as W.W. 1 has admitted that because Mr. Hopkins had refused to receive the workmen ten days earlier, he and Prabhakar refused to see him on the date in question. Daniel Prabhakar as W.W. 2 has also admitted that Mr. Hopkins had refused to receive them earlier when they wanted to see him to express their grievances and that is one of the reasons why he did not obey Mr. Hopkin's call to the office on 13th October 1949 though he knew that according to the rules he was bound to comply.

16. If the matter stood there, there is absolutely no case for the workmen. To order their reinstatement would be against all interests and would be upholding contumacious insolence and impudent insubordination. The matter however has been complicated by new pleas being advanced for the first time after this enquiry began. Comment has been already made upon the statement filed on behalf of these two workmen in this case. It does not refer to any of the circumstances leading to their dismissal, to offer any explanation or excuse. In such circumstances, normally in a Court of Law, they would not be permitted to put forward any case not specifically pleaded but allowing some latitude for their alleged illiteracy and their allegations that they had entrusted their entire case to their President and counsel. I permitted them to state whatever they wanted to urge. The result had been that they made personal allegations against Mr. Hopkins to the effect that he used to treat them in an unhuman fashion threatening them with a stick. During his deposition Omaya Poojari has stated that on 13th October 1949 he was pushed by Mr. Hopkins while Daniel Prabhakar who did not corroborate Omaya Poojari has added that Mr. Hopkins waved a stick or cane at him. It is significant that at no time earlier during the history of these disputes was this obvious afterthought of a story put forward. When the President of their Union issued a notice of strike he did not refer to this. When these men were examined by Mr. Fowler on the very next day they did not tell him anything about these matters though they concede that Mr. Fowler is a good man against whom they have nothing to urge. Yet again when the Labour Officer went into these matters they did not put forward this story of Mr. Hopkins going about with a stick to frighten these men. This concoction has to be dismissed straightaway as ridiculous.

17. Again it had been suggested during trial that the head fitter Sri Maben did not interpret properly what Mr. Hopkins told the workmen and vice versa. Similar aspersions have been made against Mr. Fowler's record of the statement of these men on 14th October 1949. These aspersions had not been put forward on any earlier stage during these disputes and are not entitled to any acceptance. Mr. Hopkins has denied that he went about with a stick to wave the same at his workmen or to indicate any semblance of violence towards them. To the same effect is the evidence of Sri Maben the head fitter and Sri Karkada, the head clerk. In fact it is obvious that it had been realized during the earlier stages following this reference that these two workmen who have found employment elsewhere had no case whatever, because their President's letter to this Tribunal and to the Labour Commissioner would justify no other conclusion.

18. For all the foregoing reasons I hold and find that these two workmen were rightly dismissed on just and proper grounds and after due enquiry and that the same is fully justified. No question of reinstatement or other relief arises.

Coimbatore,
3rd February 1951.

P. V. KRISHNASWAMI,
Industrial Tribunal.

Order—No. 725, Development, dated 16th February 1951.

Whereas the award of the Industrial Tribunal, Coimbatore, in respect of the industrial dispute between the workers and the management of the Commonwealth Tile Factory, Kudroli, Mangalore, has been received;

Now, therefore, in exercise of the powers conferred by section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), His Excellency the Governor of Madras hereby directs that the said award be published in the *Fort St. George Gazette.*

(By order of His Excellency the Governor)

J. M. LOBO PRABHU,
Secretary to Government.

To the Superintendent, Government Press, for publication.
" Commissioner of Labour (20 copies).
" Industrial Tribunal, Coimbatore.
" Management of the Commonwealth Tile Factory, Kudroli, Mangalore.
" Secretary, Commonwealth Tile Factory Workers' Union, Kudroli, Mangalore.
" District Magistrate of South Kanara.

To the Industrial Tribunal (I), High Court Buildings, Madras.
" Industrial Tribunal (II), Block No. XIV, Fort St. George, Madras.
" Industrial Tribunal, Madurai.
" Industrial Tribunal, Vijayavada at Guntur.
" Secretary to the Government of India, Ministry of Labour, New Delhi (10 copies)

To the Secretary to the Government of Bihar, Labour Department, Patna.
" Secretary to the Government of Bombay, Labour and Housing Department, Bombay.
" Secretary to the Government of West Bengal, Labour Department, Calcutta (2 copies).
" Secretary to the Government of Orissa, Commerce and Labour Department, Cuttack (3 copies).
" Secretary to the Government of Uttar Pradesh, Labour Department, Lucknow (2 copies).
" Secretary to the Government of Madhya Pradesh, Labour Department, Nagpur (3 copies).
" Chief Secretary to the Government of Assam, General and Judicial Department, Shillong (3 copies).
" Commissioner of Labour and Employment, Patna.
" Chairman, Industrial Tribunal, Bihar, Jamshedpur.
" Deputy Commissioner of Labour (Information), Civil Secretariat Buildings, Fort, Bombay.
" Registrar of Industrial Courts, Bombay (2 copies).
" Commissioner of Labour, West Bengal, Calcutta.
" Labour Commissioner, Uttar Pradesh, P.B. No. 220, Kanpur.
" Industrial Tribunal, Punjab, Bhandrath Road, Jullundur City.
" Labour Commissioner, Assam, Shillong.
" Chief Commissioner, Delhi (2 copies).
" Labour Commissioner, Punjab, Seth Pochardas Buildings, Nicholson Road, Ambala Cantonment.
" Director of Industries and Labour, Delhi.
" Chief Commissioner, Ajmer (3 copies).
" Chief Commissioner, Coorg (3 copies).

To the Chief Secretary to the Government of Hyderabad, Hyderabad (Deccan) (3 copies).
" the Chief Secretary to the Government of Mysore, Bangalore (3 copies).
" the Chief Secretary to the Government of Sourashtra, Rajkot (3 copies).
" the Chief Secretary to the Government of Travancore and Cochin, Trivandrum (5 copies).
" the Chief Secretary to the Government of Rajasthan, Jaipur (3 copies).
" the Chief Secretary, Patiala and East Punjab States Union Government, Patiala (3 copies).
" the Principal Secretary, Government of Jammu and Kashmir, Srinagar (3 copies).
" the Registrar, Labour Appellate Tribunal, City Ice Building, 4th Flour, 298, Bazaar Gate Street, Bombay (6 copies).
" Sri R. Venkataraman, M.A., B.L., No. 1/174, High Road, Royapetta, Madras.
" the Regional Labour Commissioner (Central), First Floor, Flat No. 12, Khaleeli Mansions, Mount Road, Madras.
" the Director-General, International Labour Organization, Geneva.
" the Regional Director of Resettlement and Employment, Cathedral P.O., Madras.
" the Chief Commissioner, Kutch, Bhuj (3 copies).
" the Chief Commissioner, Bhopal, Bhopal (3 copies).
" the Chief Commissioner, Bilaspur (Simla Hills) (3 copies).
" the Chief Commissioner, Vindhya Pradesh, Reva (3 copies).
" the Chief Commissioner, Manipur, Imphal (3 copies).
" the Chief Commissioner, Tripura, Agartala (3 copies).
" the Chief Commissioner, Himachal Pradesh, Simla (3 copies).

Forwarded to the

(By order)

Superintendent.

DEVELOPMENT DEPARTMENT

G.O. No. 725, 16th February 1951

Labour—Disputes—Dispute between the workers and the management of the Commonwealth Tile Factory, Kudroli, Mangalore—Award of the Industrial Tribunal, Coimbatore—Published.

READ—the following papers :—

I

G.O. Ms. No. 1315, Development, dated 31st March 1950.

II

From the Industrial Tribunal, Coimbatore, dated 9th February 1951, *No. I.D.* 8 of 1950.

BEFORE THE INDUSTRIAL TRIBUNAL, COIMBATORE.

PRESENT:

SRI P. V. KRISHNASWAMI, B.A., B.L.,
Industrial Tribunal.

INDUSTRIAL DISPUTE No. 8 OF 1950.

[In the matter of the dispute between the workers and the Management of the Commonwealth Tile Factory, Kudroli, Mangalore (vide G.O. Ms. No. 1315, Development, dated 31st March 1950.)]

Messrs. M. S. Menon, M.A., Bar.-at-Law and G. B. Pai, M.A., B.L., Advocates, Ernakulam—*For the management.*

Sri B. S. Bhaskar Rai, B.A., B.L., Advocate and President, Commonwealth Tile Factory Workers' Union, Kudroli, Mangalore—*For the workers.*

AWARD.

Reference to adjudicate whether the dismissal of Sri Omaya Poojari and Sri Daniel Prabhakar by their employer, the Commonwealth Tile Factory, Kudroli, Mangalore, was justified and if not, whether they should be reinstated.

1. The two workers are represented by their Union whose President Sri Bhaskar Rai, Advocate, has appeared for them now as at all earlier stages.

2. Both the parties were asked to file a full and clear statement of their case by 26th April 1950. On 24th April 1950, the President of the Union filed the statement on behalf of the Workers' Union and it is safe to say that it mentions nothing with regard to the impropriety, illegality or unjustifiability of the dismissals of the two employees in question. It runs into four pages and many paragraphs dealing mainly with the reinstatement of some other workmen dismissed before a strike, the wages for the strike period, an increase in the basic pay and dearness allowance, bonus, amenities to women workers, the difficulties of sweepers, the inconvenience felt at the racks and at the fire departments, skilled workers, clay stackers and holidays. It makes no reference whatever to these two employees in particular.

3. The employer's counsel obtained an extension of time to file his written statement. It is dated 9th May 1950, and urges that the two workmen were dismissed with effect from 14th October 1949 for wilful insubordination and refusal to carry out the lawful and reasonable orders of the Factory Manager; they had been given a charge-sheet in writing and afforded an opportunity to explain. They had been suspended on a prior occasion for misconduct and the same was taken into consideration in awarding a punishment to them, viz., dismissal. It is imperative in the interests of discipline inside the factory.

4. My learned Predecessor framed the following issue and communicated it to both parties:—

(1) Whether the two workmen, viz., Sri Omaya Poojari and Sri Daniel Prabhakar were dismissed on just and proper grounds and after due enquiry and if not should they be reinstated or given any other relief?

5. The advocates for the employer urged by a letter, dated 22nd May 1950, for the deletion from the issue of the words "if not whether they should be reinstated". On 3rd June 1950, the President of the Union wrote that the Workers' Union had not received till then the terms of the reference to the Tribunal and that "if the terms of the reference is only regarding the dismissal of two workers, the adjudication will be of little use to them." They had represented to the Labour Commissioner that their grievances should be redressed in the matter of wages, that a copy of the terms of reference should be forwarded to them, that issues should be framed regarding increase in basic wages, etc., that the matter should be taken up with Government regarding the terms of the reference. A reply was sent that issues can be and have been framed only on the terms of the reference and at best can be only germane to the points involved therein. No further statement was filed nor was leave asked therefor.

6. On 8th July 1950, the Tribunal received from the President of the Workers' Union a copy of a letter, dated 5th July 1950, addressed by him to the Commissioner of Labour. It complained that though he had laid specific stress on the question of increase of wages, to bring it on a par with the wages in other factories in Mangalore, the Commissioner of Labour seemed "to have referred only the matter of dismissal of two workers to the Industrial Tribunal." He added, "I am afraid we cannot be a party to such references and I have already intimated the facts to the Tribunal with copies to you and the Hon'ble Minister for Labour. Otherwise we will be wasting unnecessarily State's money on the present reference."

7. Notwithstanding all the foregoing the two employees have by their counsel participated now in the enquiry, cross-examined the four witnesses for the employer and have examined themselves.

8. The employer relies upon Exhibits M-1 to M-14 while the workmen rely on Exhibits W-1 to W-5. Exhibit M-9, dated 13th October 1949, from Mr. Hopkins (management's witness No. 4) to Mr. Fowler, the then General Group Manager, who has since retired from service sets out the incidents leading to the dismissal of these two workmen. It states that No. 1 press had not started work at 8 o'clock that morning due to pallets being not available that morning. To these two tile receivers of No. 1 press, it was pointed out that a big stock of pallets had accumulated at the press immediately opposite and that the same could be used. After some hesitation the workmen had the pallets transferred but 15 minutes production time was lost. Mr. Hopkins then informed these two workmen through the head fitter, Benjamin Maben (management's witness No. 2) that he wished to see them in his office at their break time, 9-30 a.m. Exhibit M-9 continues "they replied to the effect that if I wanted to convey anything to them I should do so through their vakil presumably Bhaskar Rai now the Union Secretary. At 9-30 I sent out for them but again they refused to come to the office giving the same reason as before." These two workers had given trouble previously and had been suspended for three days in May 1949 with a final warning in writing. Mr. Hopkins recommended adoption of strong and stern measures to suppress such acts of insubordination lest they should assume impossible proportions. He attributed the non-co-operative attitude existing amongst the press room people to their chagrin at the installation of mechanical belt conveyers to carry pallets thereby minimizing human labour and head-loads.

9. Thus addressed by Exhibit M-9, Mr. Fowler, the Group Manager addressed the very next day, 14th October 1949, Mr. Kruger who was acting General Manager at Kozhikode during the absence of Mr. Burnett (M.W. 1) on leave. Exhibit M-4 taken with the other correspondence to be adverted to explains what took place on 14th October 1949 and after. It refers to instructions by telephone by Mr. Kruger to Mr. Fowler on the 13th October agreeably to which Mr. Fowler issued on 14th October 1949, Exhibits W-1 and W-2 to Omaya Poojari and Daniel Prabhakar informing them that it had been brought to his notice that each of them had been guilty of wilful insubordination and disobedience to lawful orders of their Manager on 13th October 1949 and that they were thereby given an opportunity to explain their case to Mr. Fowler at 4 p.m. that day at his office.

10. At 4 p.m. both these workmen appeared before Mr. Fowler and he took down their joint explanation referred to and set out in Exhibit M-4 in detail. They told him that No. 1 press had not worked on the afternoon of 12th October

and when they came to work on 13th morning, there were no pallets to work No. 1 press. The Manager (Mr. Hopkins) instructed them to get pallets from No. 4 press where they were available. They got them for No. 1 press. Omaya Poojari first told Mr. Fowler that this was at 8-15 a.m. but was corrected by Daniel Prabhakar into 7-45. They took about 30 pallets but did not start work. He does not know the time but it was before 8 o'clock. He was told by Mr. Hopkins through the head fitter as interpreter to come to the office at 9-30 a.m. but they replied they will not do so since some time earlier they had told the press maistri that they wanted to see the Manager; the Manager Mr. Hopkins had then replied that there was no necessity. They then had wished to see the Manager in regard to the working at the mechanical conveyors and at the time of their request to see the Manager work had been stopped at the factory. At 9-30 a.m. on the 13th, they were again asked by the head fitter to see the Manager and again they refused for the same reason as before. They made a final statement that the vakil who is in charge of the Union may be asked about them. Finally they both refused to sign their explanation which was however attested by the interpreter (head clerk) Karkada, M.W. 3, and the head maistri B. Mohamed. Mr. Fowler himself has written the original entirely in his own handwriting. He thereupon considered that there was sufficient justification to order their dismissal relying upon rule 22 (*a*) of their Standing Orders and therefore passed an order of dismissal evidenced by Exhibits M-7 and M-8 on the 14th October 1949. The original orders of dismissal were handed over to them and the terms thereof were interpreted by the head clerk in the presence of the head maistri and Mr. Hopkins. Mr. Maben, the head fitter has also now been examined with regard to the incidents on the morning of the 13th and corroborates Mr. Hopkins and Exhibit M-9.

11. Sri Maben as M.W. 2 proves his statement, Exhibit M-3, dated 14th October 1949. Maben states there that when Mr. Hopkins directed the tile receivers, viz., Omaya Poojari and Daniel Prabhakar to arrange to take the pallets from No. 4 press they took the whole thing as a joke and did not act. Mr. Hopkins directs Sri Maben to inform these two workmen to see him in his office at 9-30 a.m. but when Sri Maben told them so they replied "the Manager need not talk to us and if he wants anything, he can do so through our vakil." At 9-30 a.m. when he asked these workmen to go to the Manager they gave the same reply.

12. It is necessary now to advert to certain prior incidents which find reference in these letters and have been now spoken to in detail by Mr. Hopkins. He installed mechanical conveyers in that factory in the first week of September 1949 and the labourers were antogonistic to such an innovation and stopped work on 3rd September 1949. A deputation wanted to see him but he refused to receive the deputation since the Standing Orders of the factory did not permit an interview of that nature when men had struck work. Since on that occasion, Mr. Hopkins refused to receive the men among whom were these Omaya Poojari and Daniel Prabhakar, the incident of 13th October more than a month later arose. They refused to remove the pallets as if to express their derision at the mechanical conveyor. They refused to obey the call of the Manager to his office because the Manager had on 3rd September 1949 refused to receive a deputation of theirs.

13. After this dismissal on 14th October 1949, Mr. Bhaskar Rai would appear to have received a letter, dated 25th November 1949, from the General Manager and it is referred to in Exhibit M-1 wherein the Labour Officer, Kozhikode, on 30th November 1949, requested the General Manager to let him know the circumstances under which the two workers were removed from service. The General Manager's reply, dated 30th November 1949, to the Labour Officer is Exhibit M-2. Subsequent negotiations failed since the employer felt that any reinstatement of these men would grossly impair discipline and output.

14. On 24th December 1949, Mr. Bhaskar Rai, on behalf of the Union gave the General Manager a notice of strike setting out a demand for redress over 26 items the first being the dismissal of these two workmen. Exhibit W-5 is the reply of the General Manager refusing to restore these two men and replying to all the other items. The question is whether in view of the foregoing these two workmen were dismissed illegally.

15. Sri Omaya Poojari as W.W. 1 has admitted that because Mr. Hopkins had refused to receive the workmen ten days earlier, he and Prabhakar refused to see him on the date in question. Daniel Prabhakar as W.W. 2 has also admitted that Mr. Hopkins had refused to receive them earlier when they wanted to see him to express their grievances and that is one of the reasons why he did not obey Mr. Hopkin's call to the office on 13th October 1949 though he knew that according to the rules he was bound to comply.

16. If the matter stood there, there is absolutely no case for the workmen. To order their reinstatement would be against all interests and would be upholding contumacious insolence and impudent insubordination. The matter however has been complicated by new pleas being advanced for the first time after this enquiry began. Comment has been already made upon the statement filed on behalf of these two workmen in this case. It does not refer to any of the circumstances leading to their dismissal, to offer any explanation or excuse. In such circumstances, normally in a Court of Law, they would not be permitted to put forward any case not specifically pleaded but allowing some latitude for their alleged illiteracy and their allegations that they had entrusted their entire case to their President and counsel. I permitted them to state whatever they wanted to urge. The result had been that they made personal allegations against Mr. Hopkins to the effect that he used to treat them in an unhuman fashion threatening them with a stick. During his deposition Omaya Poojari has stated that on 13th October 1949 he was pushed by Mr. Hopkins while Daniel Prabhakar who did not corroborate Omaya Poojari has added that Mr. Hopkins waved a stick or cane at him. It is significant that at no time earlier during the history of these disputes was this obvious afterthought of a story put forward. When the President of their Union issued a notice of strike he did not refer to this. When these men were examined by Mr. Fowler on the very next day they did not tell him anything about these matters though they concede that Mr. Fowler is a good man against whom they have nothing to urge. Yet again when the Labour Officer went into these matters they did not put forward this story of Mr. Hopkins going about with a stick to frighten these men. This concoction has to be dismissed straightaway as ridiculous.

17. Again it had been suggested during trial that the head fitter Sri Maben did not interpret properly what Mr. Hopkins told the workmen and vice versa. Similar aspersions have been made against Mr. Fowler's record of the statement of these men on 14th October 1949. These aspersions had not been put forward on any earlier stage during these disputes and are not entitled to any acceptance. Mr. Hopkins has denied that he went about with a stick to wave the same at his workmen or to indicate any semblance of violence towards them. To the same effect is the evidence of Sri Maben the head fitter and Sri Karkada, the head clerk. In fact it is obvious that it had been realized during the earlier stages following this reference that these two workmen who have found employment elsewhere had no case whatever, because their President's letter to this Tribunal and to the Labour Commissioner would justify no other conclusion.

18. For all the foregoing reasons I hold and find that these two workmen were rightly dismissed on just and proper grounds and after due enquiry and that the same is fully justified. No question of reinstatement or other relief arises.

Coimbatore,
3rd February 1951.

P. V. KRISHNASWAMI,
Industrial Tribunal.

Order—No. 725, Development, dated 16th February 1951.

Whereas the award of the Industrial Tribunal, Coimbatore, in respect of the industrial dispute between the workers and the management of the Commonwealth Tile Factory, Kudroli, Mangalore, has been received;

Now, therefore, in exercise of the powers conferred by section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), His Excellency the Governor of Madras hereby directs that the said award be published in the *Fort St. George Gazette.*

(By order of His Excellency the Governor)

J. M. LOBO PRABHU,
Secretary to Government.

To the Superintendent, Government Press, for publication.
" Commissioner of Labour (20 copies).
" Industrial Tribunal, Coimbatore.
" Management of the Commonwealth Tile Factory, Kudroli, Mangalore.
" Secretary, Commonwealth Tile Factory Workers' Union, Kudroli, Mangalore.
" District Magistrate of South Kanara.

To the Industrial Tribunal (I), High Court Buildings, Madras.
" Industrial Tribunal (II), Block No. XIV, Fort St. George, Madras.
" Industrial Tribunal, Madurai.
" Industrial Tribunal, Vijayavada at Guntur.
" Secretary to the Government of India, Ministry of Labour, New Delhi (10 copies).

To the Secretary to the Government of Bihar, Labour Department, Patna.
" Secretary to the Government of Bombay, Labour and Housing Department, Bombay.
" Secretary to the Government of West Bengal, Labour Department, Calcutta (2 copies).
" Secretary to the Government of Orissa, Commerce and Labour Department, Cuttack (3 copies).
" Secretary to the Government of Uttar Pradesh, Labour Department, Lucknow (2 copies).
" Secretary to the Government of Madhya Pradesh, Labour Department, Nagpur (3 copies).
" Chief Secretary to the Government of Assam, General and Judicial Department, Shillong (3 copies).
" Commissioner of Labour and Employment, Patna.
" Chairman, Industrial Tribunal, Bihar, Jamshedpur.
" Deputy Commissioner of Labour (Information), Civil Secretariat Buildings, Fort, Bombay.
" Registrar of Industrial Courts, Bombay (2 copies).
" Commissioner of Labour, West Bengal, Calcutta.
" Labour Commissioner, Uttar Pradesh, P.B. No. 220, Kanpur.
" Industrial Tribunal, Punjab, Bhandrath Road, Jullundur City.
" Labour Commissioner, Assam, Shillong.
" Chief Commissioner, Delhi (2 copies).
" Labour Commissioner, Punjab, Seth Pochardas Buildings, Nicholson Road, Ambala Cantonment.
" Director of Industries and Labour, Delhi.
" Chief Commissioner, Ajmer (3 copies).
" Chief Commissioner, Coorg (3 copies).

To the Chief Secretary to the Government of Hyderabad, Hyderabad (Deccan) (3 copies).
" the Chief Secretary to the Government of Mysore, Bangalore (3 copies).
" the Chief Secretary to the Government of Sourashtra, Rajkot (3 copies).
" the Chief Secretary to the Government of Travancore and Cochin, Trivandrum (5 copies).
" the Chief Secretary to the Government of Rajasthan, Jaipur (3 copies).
" the Chief Secretary, Patiala and East Punjab States Union Government, Patiala (3 copies).
" the Principal Secretary, Government of Jammu and Kashmir, Srinagar (3 copies).
" the Registrar, Labour Appellate Tribunal, City Ice Building, 4th Flour, 298, Bazaar Gate Street, Bombay (6 copies).
" Sri R. Venkataraman, M.A., B.L., No. 1/174, High Road, Royapetta, Madras.
" the Regional Labour Commissioner (Central), First Floor, Flat No. 12, Khaleeli Mansions, Mount Road, Madras.
" the Director-General, International Labour Organization, Geneva.
" the Regional Director of Resettlement and Employment, Cathedral P.O., Madras.
" the Chief Commissioner, Kutch, Bhuj (3 copies).
" the Chief Commissioner, Bhopal, Bhopal (3 copies).
" the Chief Commissioner, Bilaspur (Simla Hills) (3 copies).
" the Chief Commissioner, Vindhya Pradesh, Reva (3 copies).
" the Chief Commissioner, Manipur, Imphal (3 copies).
" the Chief Commissioner, Tripura, Agartala (3 copies).
" the Chief Commissioner, Himachal Pradesh, Simla (3 copies).

Forwarded to the secretary, commonwealth Tile Factory Workers' union, Kududi, Mangalore (By Reg post Acknow

(By order)

Superintendent.

DEVELOPMENT DEPARTMENT

G.O. No. 725, 16th February 1951

Labour—Disputes—Dispute between the workers and the management of the Commonwealth Tile Factory, Kudroli, Mangalore—Award of the Industrial Tribunal, Coimbatore—Published.

READ—the following papers :—

I

G.O. Ms. No. 1315, Development, dated 31st March 1950.

II

From the Industrial Tribunal, Coimbatore, dated 9th February 1951, *No. I.D.* 8 of 1950.

BEFORE THE INDUSTRIAL TRIBUNAL, COIMBATORE.

PRESENT:

SRI P. V. KRISHNASWAMI, B.A., B.L.,
Industrial Tribunal.

INDUSTRIAL DISPUTE No. 8 OF 1950.

[In the matter of the dispute between the workers and the Management of the Commonwealth Tile Factory, Kudroli, Mangalore (vide G.O. Ms. No. 1315, Development, dated 31st March 1950.)]

Messrs. M. S. Menon, M.A., Bar.-at-Law and G. B. Pai, M.A., B.L., Advocates, Ernakulam—*For the management.*

SRI B. S. Bhaskar Rai, B.A., B.L., Advocate and President, Commonwealth Tile Factory Workers' Union, Kudroli, Mangalore—*For the workers.*

AWARD.

Reference to adjudicate whether the dismissal of Sri Omaya Poojari and Sri Daniel Prabhakar by their employer, the Commonwealth Tile Factory, Kudroli, Mangalore, was justified and if not, whether they should be reinstated.

1. The two workers are represented by their Union whose President Sri Bhaskar Rai, Advocate, has appeared for them now as at all earlier stages.

2. Both the parties were asked to file a full and clear statement of their case by 26th April 1950. On 24th April 1950, the President of the Union filed the statement on behalf of the Workers' Union and it is safe to say that it mentions nothing with regard to the impropriety, illegality or unjustifiability of the dismissals of the two employees in question. It runs into four pages and many paragraphs dealing mainly with the reinstatement of some other workmen dismissed before a strike, the wages for the strike period, an increase in the basic pay and dearness allowance, bonus, amenities to women workers, the difficulties of sweepers, the inconvenience felt at the racks and at the fire departments, skilled workers, clay stackers and holidays. It makes no reference whatever to these two employees in particular.

3. The employer's counsel obtained an extension of time to file his written statement. It is dated 9th May 1950, and urges that the two workmen were dismissed with effect from 14th October 1949 for wilful insubordination and refusal to carry out the lawful and reasonable orders of the Factory Manager; they had been given a charge-sheet in writing and afforded an opportunity to explain. They had been suspended on a prior occasion for misconduct and the same was taken into consideration in awarding a punishment to them, viz., dismissal. It is imperative in the interests of discipline inside the factory.

4. My learned Predecessor framed the following issue and communicated it to both parties:—

(1) Whether the two workmen, viz., Sri Omaya Poojari and Sri Daniel Prabhakar were dismissed on just and proper grounds and after due enquiry and if not should they be reinstated or given any other relief?

5. The advocates for the employer urged by a letter, dated 22nd May 1950, for the deletion from the issue of the words "if not whether they should be reinstated". On 3rd June 1950, the President of the Union wrote that the Workers' Union had not received till then the terms of the reference to the Tribunal and that "if the terms of the reference is only regarding the dismissal of two workers, the adjudication will be of little use to them." They had represented to the Labour Commissioner that their grievances should be redressed in the matter of wages, that a copy of the terms of reference should be forwarded to them, that issues should be framed regarding increase in basic wages, etc., that the matter should be taken up with Government regarding the terms of the reference. A reply was sent that issues can be and have been framed only on the terms of the reference and at best can be only germane to the points involved therein. No further statement was filed nor was leave asked therefor.

6. On 8th July 1950, the Tribunal received from the President of the Workers' Union a copy of a letter, dated 5th July 1950, addressed by him to the Commissioner of Labour. It complained that though he had laid specific stress on the question of increase of wages, to bring it on a par with the wages in other factories in Mangalore, the Commissioner of Labour seemed "to have referred only the matter of dismissal of two workers to the Industrial Tribunal." He added, "I am afraid we cannot be a party to such references and I have already intimated the facts to the Tribunal with copies to you and the Hon'ble Minister for Labour. Otherwise we will be wasting unnecessarily State's money on the present reference."

7. Notwithstanding all the foregoing the two employees have by their counsel participated now in the enquiry, cross-examined the four witnesses for the employer and have examined themselves.

8. The employer relies upon Exhibits M-1 to M-14 while the workmen rely on Exhibits W-1 to W-5. Exhibit M-9, dated 13th October 1949, from Mr. Hopkins (management's witness No. 4) to Mr. Fowler, the then General Group Manager, who has since retired from service sets out the incidents leading to the dismissal of these two workmen. It states that No. 1 press had not started work at 8 o'clock that morning due to pallets being not available that morning. To these two tile receivers of No. 1 press, it was pointed out that a big stock of pallets had accumulated at the press immediately opposite and that the same could be used. After some hesitation the workmen had the pallets transferred but 15 minutes production time was lost. Mr. Hopkins then informed these two workmen through the head fitter, Benjamin Maben (management's witness No. 2) that he wished to see them in his office at their break time, 9-30 a.m. Exhibit M-9 continues "they replied to the effect that if I wanted to convey anything to them I should do so through their vakil presumably Bhaskar Rai now the Union Secretary. At 9-30 I sent out for them but again they refused to come to the office giving the same reason as before." These two workers had given trouble previously and had been suspended for three days in May 1949 with a final warning in writing. Mr. Hopkins recommended adoption of strong and stern measures to suppress such acts of insubordination lest they should assume impossible proportions. He attributed the non-co-operative attitude existing amongst the press room people to their chagrin at the installation of mechanical belt conveyers to carry pallets thereby minimizing human labour and head-loads.

9. Thus addressed by Exhibit M-9, Mr. Fowler, the Group Manager addressed the very next day, 14th October 1949, Mr. Kruger who was acting General Manager at Kozhikode during the absence of Mr. Burnett (M.W. 1) on leave. Exhibit M-4 taken with the other correspondence to be adverted to explains what took place on 14th October 1949 and after. It refers to instructions by telephone by Mr. Kruger to Mr. Fowler on the 13th October agreeably to which Mr. Fowler issued on 14th October 1949, Exhibits W-1 and W-2 to Omaya Poojari and Daniel Prabhakar informing them that it had been brought to his notice that each of them had been guilty of wilful insubordination and disobedience to lawful orders of their Manager on 13th October 1949 and that they were thereby given an opportunity to explain their case to Mr. Fowler at 4 p.m. that day at his office.

10. At 4 p.m. both these workmen appeared before Mr. Fowler and he took down their joint explanation referred to and set out in Exhibit M-4 in detail. They told him that No. 1 press had not worked on the afternoon of 12th October

and when they came to work on 13th morning, there were no pallets to work No. 1 press. The Manager (Mr. Hopkins) instructed them to get pallets from No. 4 press where they were available. They got them for No. 1 press. Omaya Poojari first told Mr. Fowler that this was at 8-15 a.m. but was corrected by Daniel Prabhakar into 7-45. They took about 30 pallets but did not start work. He does not know the time but it was before 8 o'clock. He was told by Mr. Hopkins through the head fitter as interpreter to come to the office at 9-30 a.m. but they replied they will not do so since some time earlier they had told the press maistri that they wanted to see the Manager; the Manager Mr. Hopkins had then replied that there was no necessity. They then had wished to see the Manager in regard to the working at the mechanical conveyors and at the time of their request to see the Manager work had been stopped at the factory. At 9-30 a.m. on the 13th, they were again asked by the head fitter to see the Manager and again they refused for the same reason as before. They made a final statement that the vakil who is in charge of the Union may be asked about them. Finally they both refused to sign their explanation which was however attested by the interpreter (head clerk) Karkada, M.W. 3, and the head maistri B. Mohamed. Mr. Fowler himself has written the original entirely in his own handwriting. He thereupon considered that there was sufficient justification to order their dismissal relying upon rule 22 (*a*) of their Standing Orders and therefore passed an order of dismissal evidenced by Exhibits M-7 and M-8 on the 14th October 1949. The original orders of dismissal were handed over to them and the terms thereof were interpreted by the head clerk in the presence of the head maistri and Mr. Hopkins. Mr. Maben, the head fitter has also now been examined with regard to the incidents on the morning of the 13th and corroborates Mr. Hopkins and Exhibit M-9.

11. Sri Maben as M.W. 2 proves his statement, Exhibit M-3, dated 14th October 1949. Maben states there that when Mr. Hopkins directed the tile receivers, viz., Omaya Poojari and Daniel Prabhakar to arrange to take the pallets from No. 4 press they took the whole thing as a joke and did not act. Mr. Hopkins directs Sri Maben to inform these two workmen to see him in his office at 9-30 a.m. but when Sri Maben told them so they replied "the Manager need not talk to us and if he wants anything, he can do so through our vakil." At 9-30 a.m. when he asked these workmen to go to the Manager they gave the same reply.

12. It is necessary now to advert to certain prior incidents which find reference in these letters and have been now spoken to in detail by Mr. Hopkins. He installed mechanical conveyers in that factory in the first week of September 1949 and the labourers were antogonistic to such an innovation and stopped work on 3rd September 1949. A deputation wanted to see him but he refused to receive the deputation since the Standing Orders of the factory did not permit an interview of that nature when men had struck work. Since on that occasion, Mr. Hopkins refused to receive the men among whom were these Omaya Poojari and Daniel Prabhakar, the incident of 13th October more than a month later arose. They refused to remove the pallets as if to express their derision at the mechanical conveyor. They refused to obey the call of the Manager to his office because the Manager had on 3rd September 1949 refused to receive a deputation of theirs.

13. After this dismissal on 14th October 1949, Mr. Bhaskar Rai would appear to have received a letter, dated 25th November 1949, from the General Manager and it is referred to in Exhibit M-1 wherein the Labour Officer, Kozhikode, on 30th November 1949, requested the General Manager to let him know the circumstances under which the two workers were removed from service. The General Manager's reply, dated 30th November 1949, to the Labour Officer is Exhibit M-2. Subsequent negotiations failed since the employer felt that any reinstatement of these men would grossly impair discipline and output.

14. On 24th December 1949, Mr. Bhaskar Rai, on behalf of the Union gave the General Manager a notice of strike setting out a demand for redress over 26 items the first being the dismissal of these two workmen. Exhibit W-5 is the reply of the General Manager refusing to restore these two men and replying to all the other items. The question is whether in view of the foregoing these two workmen were dismissed illegally.

15. Sri Omaya Poojari as W.W. 1 has admitted that because Mr. Hopkins had refused to receive the workmen ten days earlier, he and Prabhakar refused to see him on the date in question. Daniel Prabhakar as W.W. 2 has also admitted that Mr. Hopkins had refused to receive them earlier when they wanted to see him to express their grievances and that is one of the reasons why he did not obey Mr. Hopkin's call to the office on 13th October 1949 though he knew that according to the rules he was bound to comply.

16. If the matter stood there, there is absolutely no case for the workmen. To order their reinstatement would be against all interests and would be upholding contumacious insolence and impudent insubordination. The matter however has been complicated by new pleas being advanced for the first time after this enquiry began. Comment has been already made upon the statement filed on behalf of these two workmen in this case. It does not refer to any of the circumstances leading to their dismissal, to offer any explanation or excuse. In such circumstances, normally in a Court of Law, they would not be permitted to put forward any case not specifically pleaded but allowing some latitude for their alleged illiteracy and their allegations that they had entrusted their entire case to their President and counsel. I permitted them to state whatever they wanted to urge. The result had been that they made personal allegations against Mr. Hopkins to the effect that he used to treat them in an unhuman fashion threatening them with a stick. During his deposition Omaya Poojari has stated that on 13th October 1949 he was pushed by Mr. Hopkins while Daniel Prabhakar who did not corroborate Omaya Poojari has added that Mr. Hopkins waved a stick or cane at him. It is significant that at no time earlier during the history of these disputes was this obvious afterthought of a story put forward. When the President of their Union issued a notice of strike he did not refer to this. When these men were examined by Mr. Fowler on the very next day they did not tell him anything about these matters though they concede that Mr. Fowler is a good man against whom they have nothing to urge. Yet again when the Labour Officer went into these matters they did not put forward this story of Mr. Hopkins going about with a stick to frighten these men. This concoction has to be dismissed straightaway as ridiculous.

17. Again it had been suggested during trial that the head fitter Sri Maben did not interpret properly what Mr. Hopkins told the workmen and vice versa. Similar aspersions have been made against Mr. Fowler's record of the statement of these men on 14th October 1949. These aspersions had not been put forward on any earlier stage during these disputes and are not entitled to any acceptance. Mr. Hopkins has denied that he went about with a stick to wave the same at his workmen or to indicate any semblance of violence towards them. To the same effect is the evidence of Sri Maben the head fitter and Sri Karkada, the head clerk. In fact it is obvious that it had been realized during the earlier stages following this reference that these two workmen who have found employment elsewhere had no case whatever, because their President's letter to this Tribunal and to the Labour Commissioner would justify no other conclusion.

18. For all the foregoing reasons I hold and find that these two workmen were rightly dismissed on just and proper grounds and after due enquiry and that the same is fully justified. No question of reinstatement or other relief arises.

Coimbatore, 3rd February 1951.

P. V. KRISHNASWAMI,
Industrial Tribunal.

Order—No. 725, Development, dated 16th February 1951.

Whereas the award of the Industrial Tribunal, Coimbatore, in respect of the industrial dispute between the workers and the management of the Commonwealth Tile Factory, Kudroli, Mangalore, has been received;

Now, therefore, in exercise of the powers conferred by section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), His Excellency the Governor of Madras hereby directs that the said award be published in the *Fort St. George Gazette.*

(By order of His Excellency the Governor)

J. M. LOBO PRABHU,
Secretary to Government.

To the Superintendent, Government Press, for publication.
" Commissioner of Labour (20 copies).
" Industrial Tribunal, Coimbatore.
" Management of the Commonwealth Tile Factory, Kudroli, Mangalore.
" Secretary, Commonwealth Tile Factory Workers' Union, Kudroli, Mangalore.
" District Magistrate of South Kanara.

To the Industrial Tribunal (I), High Court Buildings, Madras.
" Industrial Tribunal (II), Block No. XIV, Fort St. George, Madras.
" Industrial Tribunal, Madurai.
" Industrial Tribunal, Vijayavada at Guntur.
" Secretary to the Government of India, Ministry of Labour, New Delhi (10 copies).

To the Secretary to the Government of Bihar, Labour Department, Patna.
" Secretary to the Government of Bombay, Labour and Housing Department, Bombay.
" Secretary to the Government of West Bengal, Labour Department, Calcutta (2 copies).
" Secretary to the Government of Orissa, Commerce and Labour Department, Cuttack (3 copies).
" Secretary to the Government of Uttar Pradesh, Labour Department, Lucknow (2 copies).
" Secretary to the Government of Madhya Pradesh, Labour Department, Nagpur (3 copies).
" Chief Secretary to the Government of Assam, General and Judicial Department, Shillong (3 copies).
" Commissioner of Labour and Employment, Patna.
" Chairman, Industrial Tribunal, Bihar, Jamshedpur.
" Deputy Commissioner of Labour (Information), Civil Secretariat Buildings, Fort, Bombay.
" Registrar of Industrial Courts, Bombay (2 copies).
" Commissioner of Labour, West Bengal, Calcutta.
" Labour Commissioner, Uttar Pradesh, P.B. No. 220, Kanpur.
" Industrial Tribunal, Punjab, Bhandrath Road, Jullundur City.
" Labour Commissioner, Assam, Shillong.
" Chief Commissioner, Delhi (2 copies).
" Labour Commissioner, Punjab, Seth Pochardas Buildings, Nicholson Road, Ambala Cantonment.
" Director of Industries and Labour, Delhi.
" Chief Commissioner, Ajmer (3 copies).
" Chief Commissioner, Coorg (3 copies).

To the Chief Secretary to the Government of Hyderabad, Hyderabad (Deccan) (3 copies).
" the Chief Secretary to the Government of Mysore, Bangalore (3 copies).
" the Chief Secretary to the Government of Sourashtra, Rajkot (3 copies).
" the Chief Secretary to the Government of Travancore and Cochin, Trivandrum (5 copies).
" the Chief Secretary to the Government of Rajasthan, Jaipur (3 copies).
" the Chief Secretary, Patiala and East Punjab States Union Government, Patiala (3 copies).
" the Principal Secretary, Government of Jammu and Kashmir, Srinagar (3 copies).
" the Registrar, Labour Appellate Tribunal, City Ice Building, 4th Flour, 298, Bazaar Gate Street, Bombay (6 copies).
" Sri R. Venkataraman, M.A., B.L., No. 1/174, High Road, Royapetta, Madras.
" the Regional Labour Commissioner (Central), First Floor, Flat No. 12, Khaleeli Mansions, Mount Road, Madras.
" the Director-General, International Labour Organization, Geneva.
" the Regional Director of Resettlement and Employment, Cathedral P.O., Madras.
" the Chief Commissioner, Kutch, Bhuj (3 copies).
" the Chief Commissioner, Bhopal, Bhopal (3 copies).
" the Chief Commissioner, Bilaspur (Simla Hills) (3 copies).
" the Chief Commissioner, Vindhya Pradesh, Reva (3 copies).
" the Chief Commissioner, Manipur, Imphal (3 copies).
" the Chief Commissioner, Tripura, Agartala (3 copies).
" the Chief Commissioner, Himachal Pradesh, Simla (3 copies).

Forwarded to the

(By order)

Superintendent.

DEVELOPMENT DEPARTMENT

G.O. No. 725, 16th February 1951

Labour—Disputes—Dispute between the workers and the management of the Commonwealth Tile Factory, Kudroli, Mangalore—Award of the Industrial Tribunal, Coimbatore—Published.

READ—the following papers :—

I

G.O. Ms. No. 1315, Development, dated 31st March 1950.

II

From the Industrial Tribunal, Coimbatore, dated 9th February 1951, *No. I.D.* 8 of 1950.

BEFORE THE INDUSTRIAL TRIBUNAL, COIMBATORE.

PRESENT:

SRI P. V. KRISHNASWAMI, B.A., B.L.,
Industrial Tribunal.

INDUSTRIAL DISPUTE No. 8 OF 1950.

[In the matter of the dispute between the workers and the Management of the Commonwealth Tile Factory, Kudroli, Mangalore (vide G.O. Ms. No. 1315, Development, dated 31st March 1950.)]

Messrs. M. S. Menon, M.A., Bar.-at-Law and G. B. Pai, M.A., B.L., Advocates, Ernakulam—*For the management.*

SRI B. S. Bhaskar Rai, B.A., B.L., Advocate and President, Commonwealth Tile Factory Workers' Union, Kudroli, Mangalore—*For the workers.*

AWARD.

Reference to adjudicate whether the dismissal of Sri Omaya Poojari and Sri Daniel Prabhakar by their employer, the Commonwealth Tile Factory, Kudroli, Mangalore, was justified and if not, whether they should be reinstated.

1. The two workers are represented by their Union whose President Sri Bhaskar Rai, Advocate, has appeared for them now as at all earlier stages.

2. Both the parties were asked to file a full and clear statement of their case by 26th April 1950. On 24th April 1950, the President of the Union filed the statement on behalf of the Workers' Union and it is safe to say that it mentions nothing with regard to the impropriety, illegality or unjustifiability of the dismissals of the two employees in question. It runs into four pages and many paragraphs dealing mainly with the reinstatement of some other workmen dismissed before a strike, the wages for the strike period, an increase in the basic pay and dearness allowance, bonus, amenities to women workers, the difficulties of sweepers, the inconvenience felt at the racks and at the fire departments, skilled workers, clay stackers and holidays. It makes no reference whatever to these two employees in particular.

3. The employer's counsel obtained an extension of time to file his written statement. It is dated 9th May 1950, and urges that the two workmen were dismissed with effect from 14th October 1949 for wilful insubordination and refusal to carry out the lawful and reasonable orders of the Factory Manager; they had been given a charge-sheet in writing and afforded an opportunity to explain. They had been suspended on a prior occasion for misconduct and the same was taken into consideration in awarding a punishment to them, viz., dismissal. It is imperative in the interests of discipline inside the factory.

4. My learned Predecessor framed the following issue and communicated it to both parties:—

(1) Whether the two workmen, viz., Sri Omaya Poojari and Sri Daniel Prabhakar were dismissed on just and proper grounds and after due enquiry and if not should they be reinstated or given any other relief?

5. The advocates for the employer urged by a letter, dated 22nd May 1950, for the deletion from the issue of the words "if not whether they should be reinstated". On 3rd June 1950, the President of the Union wrote that the Workers' Union had not received till then the terms of the reference to the Tribunal and that "if the terms of the reference is only regarding the dismissal of two workers, the adjudication will be of little use to them." They had represented to the Labour Commissioner that their grievances should be redressed in the matter of wages, that a copy of the terms of reference should be forwarded to them, that issues should be framed regarding increase in basic wages, etc., that the matter should be taken up with Government regarding the terms of the reference. A reply was sent that issues can be and have been framed only on the terms of the reference and at best can be only germane to the points involved therein. No further statement was filed nor was leave asked therefor.

6. On 8th July 1950, the Tribunal received from the President of the Workers' Union a copy of a letter, dated 5th July 1950, addressed by him to the Commissioner of Labour. It complained that though he had laid specific stress on the question of increase of wages, to bring it on a par with the wages in other factories in Mangalore, the Commissioner of Labour seemed "to have referred only the matter of dismissal of two workers to the Industrial Tribunal." He added, "I am afraid we cannot be a party to such references and I have already intimated the facts to the Tribunal with copies to you and the Hon'ble Minister for Labour. Otherwise we will be wasting unnecessarily State's money on the present reference."

7. Notwithstanding all the foregoing the two employees have by their counsel participated now in the enquiry, cross-examined the four witnesses for the employer and have examined themselves.

8. The employer relies upon Exhibits M-1 to M-14 while the workmen rely on Exhibits W-1 to W-5. Exhibit M-9, dated 13th October 1949, from Mr. Hopkins (management's witness No. 4) to Mr. Fowler, the then General Group Manager, who has since retired from service sets out the incidents leading to the dismissal of these two workmen. It states that No. 1 press had not started work at 8 o'clock that morning due to pallets being not available that morning. To these two tile receivers of No. 1 press, it was pointed out that a big stock of pallets had accumulated at the press immediately opposite and that the same could be used. After some hesitation the workmen had the pallets transferred but 15 minutes production time was lost. Mr. Hopkins then informed these two workmen through the head fitter, Benjamin Maben (management's witness No. 2) that he wished to see them in his office at their break time, 9-30 a.m. Exhibit M-9 continues "they replied to the effect that if I wanted to convey anything to them I should do so through their vakil presumably Bhaskar Rai now the Union Secretary. At 9-30 I sent out for them but again they refused to come to the office giving the same reason as before." These two workers had given trouble previously and had been suspended for three days in May 1949 with a final warning in writing. Mr. Hopkins recommended adoption of strong and stern measures to suppress such acts of insubordination lest they should assume impossible proportions. He attributed the non-co-operative attitude existing amongst the press room people to their chagrin at the installation of mechanical belt conveyers to carry pallets thereby minimizing human labour and head-loads.

9. Thus addressed by Exhibit M-9, Mr. Fowler, the Group Manager addressed the very next day, 14th October 1949, Mr. Kruger who was acting General Manager at Kozhikode during the absence of Mr. Burnett (M.W. 1) on leave. Exhibit M-4 taken with the other correspondence to be adverted to explains what took place on 14th October 1949 and after. It refers to instructions by telephone by Mr. Kruger to Mr. Fowler on the 13th October agreeably to which Mr. Fowler issued on 14th October 1949, Exhibits W-1 and W-2 to Omaya Poojari and Daniel Prabhakar informing them that it had been brought to his notice that each of them had been guilty of wilful insubordination and disobedience to lawful orders of their Manager on 13th October 1949 and that they were thereby given an opportunity to explain their case to Mr. Fowler at 4 p.m. that day at his office.

10. At 4 p.m. both these workmen appeared before Mr. Fowler and he took down their joint explanation referred to and set out in Exhibit M-4 in detail. They told him that No. 1 press had not worked on the afternoon of 12th October

and when they came to work on 13th morning, there were no pallets to work No. 1 press. The Manager (Mr. Hopkins) instructed them to get pallets from No. 4 press where they were available. They got them for No. 1 press. Omaya Poojari first told Mr. Fowler that this was at 8-15 a.m. but was corrected by Daniel Prabhakar into 7-45. They took about 30 pallets but did not start work. He does not know the time but it was before 8 o'clock. He was told by Mr. Hopkins through the head fitter as interpreter to come to the office at 9-30 a.m. but they replied they will not do so since some time earlier they had told the press maistri that they wanted to see the Manager; the Manager Mr. Hopkins had then replied that there was no necessity. They then had wished to see the Manager in regard to the working at the mechanical conveyors and at the time of their request to see the Manager work had been stopped at the factory. At 9-30 a.m. on the 13th, they were again asked by the head fitter to see the Manager and again they refused for the same reason as before. They made a final statement that the vakil who is in charge of the Union may be asked about them. Finally they both refused to sign their explanation which was however attested by the interpreter (head clerk) Karkada, M.W. 3, and the head maistri B. Mohamed. Mr. Fowler himself has written the original entirely in his own handwriting. He thereupon considered that there was sufficient justification to order their dismissal relying upon rule 22 (*a*) of their Standing Orders and therefore passed an order of dismissal evidenced by Exhibits M-7 and M-8 on the 14th October 1949. The original orders of dismissal were handed over to them and the terms thereof were interpreted by the head clerk in the presence of the head maistri and Mr. Hopkins. Mr. Maben, the head fitter has also now been examined with regard to the incidents on the morning of the 13th and corroborates Mr. Hopkins and Exhibit M-9.

11. Sri Maben as M.W. 2 proves his statement, Exhibit M-3, dated 14th October 1949. Maben states there that when Mr. Hopkins directed the tile receivers, viz., Omaya Poojari and Daniel Prabhakar to arrange to take the pallets from No. 4 press they took the whole thing as a joke and did not act. Mr. Hopkins directs Sri Maben to inform these two workmen to see him in his office at 9-30 a.m. but when Sri Maben told them so they replied "the Manager need not talk to us and if he wants anything, he can do so through our vakil." At 9-30 a.m. when he asked these workmen to go to the Manager they gave the same reply.

12. It is necessary now to advert to certain prior incidents which find reference in these letters and have been now spoken to in detail by Mr. Hopkins. He installed mechanical conveyers in that factory in the first week of September 1949 and the labourers were antogonistic to such an innovation and stopped work on 3rd September 1949. A deputation wanted to see him but he refused to receive the deputation since the Standing Orders of the factory did not permit an interview of that nature when men had struck work. Since on that occasion, Mr. Hopkins refused to receive the men among whom were these Omaya Poojari and Daniel Prabhakar, the incident of 13th October more than a month later arose. They refused to remove the pallets as if to express their derision at the mechanical conveyor. They refused to obey the call of the Manager to his office because the Manager had on 3rd September 1949 refused to receive a deputation of theirs.

13. After this dismissal on 14th October 1949, Mr. Bhaskar Rai would appear to have received a letter, dated 25th November 1949, from the General Manager and it is referred to in Exhibit M-1 wherein the Labour Officer, Kozhikode, on 30th November 1949, requested the General Manager to let him know the circumstances under which the two workers were removed from service. The General Manager's reply, dated 30th November 1949, to the Labour Officer is Exhibit M-2. Subsequent negotiations failed since the employer felt that any reinstatement of these men would grossly impair discipline and output.

14. On 24th December 1949, Mr. Bhaskar Rai, on behalf of the Union gave the General Manager a notice of strike setting out a demand for redress over 26 items the first being the dismissal of these two workmen. Exhibit W-5 is the reply of the General Manager refusing to restore these two men and replying to all the other items. The question is whether in view of the foregoing these two workmen were dismissed illegally.

15. Sri Omaya Poojari as W.W. 1 has admitted that because Mr. Hopkins had refused to receive the workmen ten days earlier, he and Prabhakar refused to see him on the date in question. Daniel Prabhakar as W.W. 2 has also admitted that Mr. Hopkins had refused to receive them earlier when they wanted to see him to express their grievances and that is one of the reasons why he did not obey Mr. Hopkin's call to the office on 13th October 1949 though he knew that according to the rules he was bound to comply.

16. If the matter stood there, there is absolutely no case for the workmen. To order their reinstatement would be against all interests and would be upholding contumacious insolence and impudent insubordination. The matter however has been complicated by new pleas being advanced for the first time after this enquiry began. Comment has been already made upon the statement filed on behalf of these two workmen in this case. It does not refer to any of the circumstances leading to their dismissal, to offer any explanation or excuse. In such circumstances, normally in a Court of Law, they would not be permitted to put forward any case not specifically pleaded but allowing some latitude for their alleged illiteracy and their allegations that they had entrusted their entire case to their President and counsel. I permitted them to state whatever they wanted to urge. The result had been that they made personal allegations against Mr. Hopkins to the effect that he used to treat them in an unhuman fashion threatening them with a stick. During his deposition Omaya Poojari has stated that on 13th October 1949 he was pushed by Mr. Hopkins while Daniel Prabhakar who did not corroborate Omaya Poojari has added that Mr. Hopkins waved a stick or cane at him. It is significant that at no time earlier during the history of these disputes was this obvious afterthought of a story put forward. When the President of their Union issued a notice of strike he did not refer to this. When these men were examined by Mr. Fowler on the very next day they did not tell him anything about these matters though they concede that Mr. Fowler is a good man against whom they have nothing to urge. Yet again when the Labour Officer went into these matters they did not put forward this story of Mr. Hopkins going about with a stick to frighten these men. This concoction has to be dismissed straightaway as ridiculous.

17. Again it had been suggested during trial that the head fitter Sri Maben did not interpret properly what Mr. Hopkins told the workmen and vice versa. Similar aspersions have been made against Mr. Fowler's record of the statement of these men on 14th October 1949. These aspersions had not been put forward on any earlier stage during these disputes and are not entitled to any acceptance. Mr. Hopkins has denied that he went about with a stick to wave the same at his workmen or to indicate any semblance of violence towards them. To the same effect is the evidence of Sri Maben the head fitter and Sri Karkada, the head clerk. In fact it is obvious that it had been realized during the earlier stages following this reference that these two workmen who have found employment elsewhere had no case whatever, because their President's letter to this Tribunal and to the Labour Commissioner would justify no other conclusion.

18. For all the foregoing reasons I hold and find that these two workmen were rightly dismissed on just and proper grounds and after due enquiry and that the same is fully justified. No question of reinstatement or other relief arises.

Coimbatore,
3rd February 1951.

P. V. KRISHNASWAMI,
Industrial Tribunal.

Order—No. 725, Development, dated 16th February 1951.

Whereas the award of the Industrial Tribunal, Coimbatore, in respect of the industrial dispute between the workers and the management of the Commonwealth Tile Factory, Kudroli, Mangalore, has been received;

Now, therefore, in exercise of the powers conferred by section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), His Excellency the Governor of Madras hereby directs that the said award be published in the *Fort St. George Gazette.*

(By order of His Excellency the Governor)

J. M. LOBO PRABHU,
Secretary to Government.

To the Superintendent, Government Press, for publication.
" Commissioner of Labour (20 copies).
" Industrial Tribunal, Coimbatore.
" Management of the Commonwealth Tile Factory, Kudroli, Mangalore.
" Secretary, Commonwealth Tile Factory Workers' Union, Kudroli, Mangalore.
" District Magistrate of South Kanara.

To the Industrial Tribunal (I), High Court Buildings, Madras.
" Industrial Tribunal (II), Block No. XIV, Fort St. George, Madras.
" Industrial Tribunal, Madurai.
" Industrial Tribunal, Vijayavada at Guntur.
" Secretary to the Government of India, Ministry of Labour, New Delhi (10 copies).

To the Secretary to the Government of Bihar, Labour Department, Patna.
" Secretary to the Government of Bombay, Labour and Housing Department, Bombay.
" Secretary to the Government of West Bengal, Labour Department, Calcutta (2 copies).
" Secretary to the Government of Orissa, Commerce and Labour Department, Cuttack (3 copies).
" Secretary to the Government of Uttar Pradesh, Labour Department, Lucknow (2 copies).
" Secretary to the Government of Madhya Pradesh, Labour Department, Nagpur (3 copies).
" Chief Secretary to the Government of Assam, General and Judicial Department, Shillong (3 copies).
" Commissioner of Labour and Employment, Patna.
" Chairman, Industrial Tribunal, Bihar, Jamshedpur.
" Deputy Commissioner of Labour (Information), Civil Secretariat Buildings, Fort, Bombay.
" Registrar of Industrial Courts, Bombay (2 copies).
" Commissioner of Labour, West Bengal, Calcutta.
" Labour Commissioner, Uttar Pradesh, P.B. No. 220, Kanpur.
" Industrial Tribunal, Punjab, Bhandrath Road, Jullundur City.
" Labour Commissioner, Assam, Shillong.
" Chief Commissioner, Delhi (2 copies).
" Labour Commissioner, Punjab, Seth Pochardas Buildings, Nicholson Road, Ambala Cantonment.
" Director of Industries and Labour, Delhi.
" Chief Commissioner, Ajmer (3 copies).
" Chief Commissioner, Coorg (3 copies).

To the Chief Secretary to the Government of Hyderabad, Hyderabad (Deccan) (3 copies).
" the Chief Secretary to the Government of Mysore, Bangalore (3 copies).
" the Chief Secretary to the Government of Sourashtra, Rajkot (3 copies).
" the Chief Secretary to the Government of Travancore and Cochin, Trivandrum (5 copies).
" the Chief Secretary to the Government of Rajasthan, Jaipur (3 copies).
" the Chief Secretary, Patiala and East Punjab States Union Government, Patiala (3 copies).
" the Principal Secretary, Government of Jammu and Kashmir, Srinagar (3 copies).
" the Registrar, Labour Appellate Tribunal, City Ice Building, 4th Flour, 298, Bazaar Gate Street, Bombay (6 copies).
" Sri R. Venkataraman, M.A., B.L., No. 1/174, High Road, Royapetta, Madras.
" the Regional Labour Commissioner (Central), First Floor, Flat No. 12, Khaleeli Mansions, Mount Road, Madras.
" the Director-General, International Labour Organization, Geneva.
" the Regional Director of Resettlement and Employment, Cathedral P.O., Madras.
" the Chief Commissioner, Kutch, Bhuj (3 copies).
" the Chief Commissioner, Bhopal, Bhopal (3 copies).
" the Chief Commissioner, Bilaspur (Simla Hills) (3 copies).
" the Chief Commissioner, Vindhya Pradesh, Reva (3 copies).
" the Chief Commissioner, Manipur, Imphal (3 copies).
" the Chief Commissioner, Tripura, Agartala (3 copies).
" the Chief Commissioner, Himachal Pradesh, Simla (3 copies).

MISCELLANEOUS.

DEVELOPMENT DEPARTMENT

G.O. No. 725, 16th February 1951

Labour—Disputes—Dispute between the workers and the management of the Commonwealth Tile Factory, Kudroli, Mangalore—Award of the Industrial Tribunal, Coimbatore—Published.

READ—the following papers :—

I

G.O. Ms. No. 1315, Development, dated 31st March 1950.

II

From the Industrial Tribunal, Coimbatore, dated 9th February 1951, *No. I.D.* 8 of 1950.

BEFORE THE INDUSTRIAL TRIBUNAL, COIMBATORE.

PRESENT :

SRI P. V. KRISHNASWAMI, B.A., B.L.,
Industrial Tribunal.

INDUSTRIAL DISPUTE No. 8 OF 1950.

[In the matter of the dispute between the workers and the Management of the Commonwealth Tile Factory, Kudroli, Mangalore (vide G.O. Ms. No. 1315, Development, dated 31st March 1950.)]

Messrs. M. S. Menon, M.A., Bar.-at-Law and G. B. Pai, M.A., B.L., Advocates, Ernakulam—*For the management.*

SRI B. S. Bhaskar Rai, B.A., B.L., Advocate and President, Commonwealth Tile Factory Workers' Union, Kudroli, Mangalore—*For the workers.*

AWARD.

Reference to adjudicate whether the dismissal of Sri Omaya Poojari and Sri Daniel Prabhakar by their employer, the Commonwealth Tile Factory, Kudroli, Mangalore, was justified and if not, whether they should be reinstated.

1. The two workers are represented by their Union whose President Sri Bhaskar Rai, Advocate, has appeared for them now as at all earlier stages.

2. Both the parties were asked to file a full and clear statement of their case by 26th April 1950. On 24th April 1950, the President of the Union filed the statement on behalf of the Workers' Union and it is safe to say that it mentions nothing with regard to the impropriety, illegality or unjustifiability of the dismissals of the two employees in question. It runs into four pages and many paragraphs dealing mainly with the reinstatement of some other workmen dismissed before a strike, the wages for the strike period, an increase in the basic pay and dearness allowance, bonus, amenities to women workers, the difficulties of sweepers, the inconvenience felt at the racks and at the fire departments, skilled workers, clay stackers and holidays. It makes no reference whatever to these two employees in particular.

3. The employer's counsel obtained an extension of time to file his written statement. It is dated 9th May 1950, and urges that the two workmen were dismissed with effect from 14th October 1949 for wilful insubordination and refusal to carry out the lawful and reasonable orders of the Factory Manager; they had been given a charge-sheet in writing and afforded an opportunity to explain. They had been suspended on a prior occasion for misconduct and the same was taken into consideration in awarding a punishment to them, viz., dismissal. It is imperative in the interests of discipline inside the factory.

4. My learned Predecessor framed the following issue and communicated it to both parties:—

(1) Whether the two workmen, viz., Sri Omaya Poojari and Sri Daniel Prabhakar were dismissed on just and proper grounds and after due enquiry and if not should they be reinstated or given any other relief?

5. The advocates for the employer urged by a letter, dated 22nd May 1950, for the deletion from the issue of the words "if not whether they should be reinstated". On 3rd June 1950, the President of the Union wrote that the Workers' Union had not received till then the terms of the reference to the Tribunal and that "if the terms of the reference is only regarding the dismissal of two workers, the adjudication will be of little use to them." They had represented to the Labour Commissioner that their grievances should be redressed in the matter of wages, that a copy of the terms of reference should be forwarded to them, that issues should be framed regarding increase in basic wages, etc., that the matter should be taken up with Government regarding the terms of the reference. A reply was sent that issues can be and have been framed only on the terms of the reference and at best can be only germane to the points involved therein. No further statement was filed nor was leave asked therefor.

6. On 8th July 1950, the Tribunal received from the President of the Workers' Union a copy of a letter, dated 5th July 1950, addressed by him to the Commissioner of Labour. It complained that though he had laid specific stress on the question of increase of wages, to bring it on a par with the wages in other factories in Mangalore, the Commissioner of Labour seemed "to have referred only the matter of dismissal of two workers to the Industrial Tribunal." He added, "I am afraid we cannot be a party to such references and I have already intimated the facts to the Tribunal with copies to you and the Hon'ble Minister for Labour. Otherwise we will be wasting unnecessarily State's money on the present reference."

7. Notwithstanding all the foregoing the two employees have by their counsel participated now in the enquiry, cross-examined the four witnesses for the employer and have examined themselves.

8. The employer relies upon Exhibits M-1 to M-14 while the workmen rely on Exhibits W-1 to W-5. Exhibit M-9, dated 13th October 1949, from Mr. Hopkins (management's witness No. 4) to Mr. Fowler, the then General Group Manager, who has since retired from service sets out the incidents leading to the dismissal of these two workmen. It states that No. 1 press had not started work at 8 o'clock that morning due to pallets being not available that morning. To these two tile receivers of No. 1 press, it was pointed out that a big stock of pallets had accumulated at the press immediately opposite and that the same could be used. After some hesitation the workmen had the pallets transferred but 15 minutes production time was lost. Mr. Hopkins then informed these two workmen through the head fitter, Benjamin Maben (management's witness No. 2) that he wished to see them in his office at their break time, 9-30 a.m. Exhibit M-9 continues "they replied to the effect that if I wanted to convey anything to them I should do so through their vakil presumably Bhaskar Rai now the Union Secretary. At 9-30 I sent out for them but again they refused to come to the office giving the same reason as before." These two workers had given trouble previously and had been suspended for three days in May 1949 with a final warning in writing. Mr. Hopkins recommended adoption of strong and stern measures to suppress such acts of insubordination lest they should assume impossible proportions. He attributed the non-co-operative attitude existing amongst the press room people to their chagrin at the installation of mechanical belt conveyers to carry pallets thereby minimizing human labour and head-loads.

9. Thus addressed by Exhibit M-9, Mr. Fowler, the Group Manager addressed the very next day, 14th October 1949, Mr. Kruger who was acting General Manager at Kozhikode during the absence of Mr. Burnett (M.W. 1) on leave. Exhibit M-4 taken with the other correspondence to be adverted to explains what took place on 14th October 1949 and after. It refers to instructions by telephone by Mr. Kruger to Mr. Fowler on the 13th October agreeably to which Mr. Fowler issued on 14th October 1949, Exhibits W-1 and W-2 to Omaya Poojari and Daniel Prabhakar informing them that it had been brought to his notice that each of them had been guilty of wilful insubordination and disobedience to lawful orders of their Manager on 13th October 1949 and that they were thereby given an opportunity to explain their case to Mr. Fowler at 4 p.m. that day at his office.

10. At 4 p.m. both these workmen appeared before Mr. Fowler and he took down their joint explanation referred to and set out in Exhibit M-4 in detail. They told him that No. 1 press had not worked on the afternoon of 12th October

and when they came to work on 13th morning, there were no pallets to work No. 1 press. The Manager (Mr. Hopkins) instructed them to get pallets from No. 4 press where they were available. They got them for No. 1 press. Omaya Poojari first told Mr. Fowler that this was at 8-15 a.m. but was corrected by Daniel Prabhakar into 7-45. They took about 30 pallets but did not start work. He does not know the time but it was before 8 o'clock. He was told by Mr. Hopkins through the head fitter as interpreter to come to the office at 9-30 a.m. but they replied they will not do so since some time earlier they had told the press maistri that they wanted to see the Manager; the Manager Mr. Hopkins had then replied that there was no necessity. They then had wished to see the Manager in regard to the working at the mechanical conveyors and at the time of their request to see the Manager work had been stopped at the factory. At 9-30 a.m. on the 13th, they were again asked by the head fitter to see the Manager and again they refused for the same reason as before. They made a final statement that the vakil who is in charge of the Union may be asked about them. Finally they both refused to sign their explanation which was however attested by the interpreter (head clerk) Karkada, M.W. 3, and the head maistri B. Mohamed. Mr. Fowler himself has written the original entirely in his own handwriting. He thereupon considered that there was sufficient justification to order their dismissal relying upon rule 22 (*a*) of their Standing Orders and therefore passed an order of dismissal evidenced by Exhibits M-7 and M-8 on the 14th October 1949. The original orders of dismissal were handed over to them and the terms thereof were interpreted by the head clerk in the presence of the head maistri and Mr. Hopkins. Mr. Maben, the head fitter has also now been examined with regard to the incidents on the morning of the 13th and corroborates Mr. Hopkins and Exhibit M-9.

11. Sri Maben as M.W. 2 proves his statement, Exhibit M-3, dated 14th October 1949. Maben states there that when Mr. Hopkins directed the tile receivers, viz., Omaya Poojari and Daniel Prabhakar to arrange to take the pallets from No. 4 press they took the whole thing as a joke and did not act. Mr. Hopkins directs Sri Maben to inform these two workmen to see him in his office at 9-30 a.m. but when Sri Maben told them so they replied "the Manager need not talk to us and if he wants anything, he can do so through our vakil." At 9-30 a.m. when he asked these workmen to go to the Manager they gave the same reply.

12. It is necessary now to advert to certain prior incidents which find reference in these letters and have been now spoken to in detail by Mr. Hopkins. He installed mechanical conveyers in that factory in the first week of September 1949 and the labourers were antogonistic to such an innovation and stopped work on 3rd September 1949. A deputation wanted to see him but he refused to receive the deputation since the Standing Orders of the factory did not permit an interview of that nature when men had struck work. Since on that occasion, Mr. Hopkins refused to receive the men among whom were these Omaya Poojari and Daniel Prabhakar, the incident of 13th October more than a month later arose. They refused to remove the pallets as if to express their derision at the mechanical conveyor. They refused to obey the call of the Manager to his office because the Manager had on 3rd September 1949 refused to receive a deputation of theirs.

13. After this dismissal on 14th October 1949, Mr. Bhaskar Rai would appear to have received a letter, dated 25th November 1949, from the General Manager and it is referred to in Exhibit M-1 wherein the Labour Officer, Kozhikode, on 30th November 1949, requested the General Manager to let him know the circumstances under which the two workers were removed from service. The General Manager's reply, dated 30th November 1949, to the Labour Officer is Exhibit M-2. Subsequent negotiations failed since the employer felt that any reinstatement of these men would grossly impair discipline and output.

14. On 24th December 1949, Mr. Bhaskar Rai, on behalf of the Union gave the General Manager a notice of strike setting out a demand for redress over 26 items the first being the dismissal of these two workmen. Exhibit W-5 is the reply of the General Manager refusing to restore these two men and replying to all the other items. The question is whether in view of the foregoing these two workmen were dismissed illegally.

15. Sri Omaya Poojari as W.W. 1 has admitted that because Mr. Hopkins had refused to receive the workmen ten days earlier, he and Prabhakar refused to see him on the date in question. Daniel Prabhakar as W.W. 2 has also admitted that Mr. Hopkins had refused to receive them earlier when they wanted to see him to express their grievances and that is one of the reasons why he did not obey Mr. Hopkin's call to the office on 13th October 1949 though he knew that according to the rules he was bound to comply.

16. If the matter stood there, there is absolutely no case for the workmen. To order their reinstatement would be against all interests and would be upholding contumacious insolence and impudent insubordination. The matter however has been complicated by new pleas being advanced for the first time after this enquiry began. Comment has been already made upon the statement filed on behalf of these two workmen in this case. It does not refer to any of the circumstances leading to their dismissal, to offer any explanation or excuse. In such circumstances, normally in a Court of Law, they would not be permitted to put forward any case not specifically pleaded but allowing some latitude for their alleged illiteracy and their allegations that they had entrusted their entire case to their President and counsel. I permitted them to state whatever they wanted to urge. The result had been that they made personal allegations against Mr. Hopkins to the effect that he used to treat them in an unhuman fashion threatening them with a stick. During his deposition Omaya Poojari has stated that on 13th October 1949 he was pushed by Mr. Hopkins while Daniel Prabhakar who did not corroborate Omaya Poojari has added that Mr. Hopkins waved a stick or cane at him. It is significant that at no time earlier during the history of these disputes was this obvious afterthought of a story put forward. When the President of their Union issued a notice of strike he did not refer to this. When these men were examined by Mr. Fowler on the very next day they did not tell him anything about these matters though they concede that Mr. Fowler is a good man against whom they have nothing to urge. Yet again when the Labour Officer went into these matters they did not put forward this story of Mr. Hopkins going about with a stick to frighten these men. This concoction has to be dismissed straightaway as ridiculous.

17. Again it had been suggested during trial that the head fitter Sri Maben did not interpret properly what Mr. Hopkins told the workmen and vice versa. Similar aspersions have been made against Mr. Fowler's record of the statement of these men on 14th October 1949. These aspersions had not been put forward on any earlier stage during these disputes and are not entitled to any acceptance. Mr. Hopkins has denied that he went about with a stick to wave the same at his workmen or to indicate any semblance of violence towards them. To the same effect is the evidence of Sri Maben the head fitter and Sri Karkada, the head clerk. In fact it is obvious that it had been realized during the earlier stages following this reference that these two workmen who have found employment elsewhere had no case whatever, because their President's letter to this Tribunal and to the Labour Commissioner would justify no other conclusion.

18. For all the foregoing reasons I hold and find that these two workmen were rightly dismissed on just and proper grounds and after due enquiry and that the same is fully justified. No question of reinstatement or other relief arises.

Coimbatore,
3rd February 1951.

P. V. KRISHNASWAMI,
Industrial Tribunal.

Order—No. 725, Development, dated 16th February 1951.

Whereas the award of the Industrial Tribunal, Coimbatore, in respect of the industrial dispute between the workers and the management of the Commonwealth Tile Factory, Kudroli, Mangalore, has been received;

Now, therefore, in exercise of the powers conferred by section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), His Excellency the Governor of Madras hereby directs that the said award be published in the *Fort St. George Gazette.*

(By order of His Excellency the Governor)

J. M. LOBO PRABHU,
Secretary to Government.

To the Superintendent, Government Press, for publication.
" Commissioner of Labour (20 copies).
" Industrial Tribunal, Coimbatore.
" Management of the Commonwealth Tile Factory, Kudroli, Mangalore.
" Secretary, Commonwealth Tile Factory Workers' Union, Kudroli, Mangalore.
" District Magistrate of South Kanara.

To the Industrial Tribunal (I), High Court Buildings, Madras.
" Industrial Tribunal (II), Block No. XIV, Fort St. George, Madras.
" Industrial Tribunal, Madurai.
" Industrial Tribunal, Vijayavada at Guntur.
" Secretary to the Government of India, Ministry of Labour, New Delhi (10 copies).

To the Secretary to the Government of Bihar, Labour Department, Patna.
" Secretary to the Government of Bombay, Labour and Housing Department, Bombay.
" Secretary to the Government of West Bengal, Labour Department, Calcutta (2 copies).
" Secretary to the Government of Orissa, Commerce and Labour Department, Cuttack (3 copies).
" Secretary to the Government of Uttar Pradesh, Labour Department, Lucknow (2 copies).
" Secretary to the Government of Madhya Pradesh, Labour Department, Nagpur (3 copies).
" Chief Secretary to the Government of Assam, General and Judicial Department, Shillong (3 copies).
" Commissioner of Labour and Employment, Patna.
" Chairman, Industrial Tribunal, Bihar, Jamshedpur.
" Deputy Commissioner of Labour (Information), Civil Secretariat Buildings, Fort, Bombay.
" Registrar of Industrial Courts, Bombay (2 copies).
" Commissioner of Labour, West Bengal, Calcutta.
" Labour Commissioner, Uttar Pradesh, P.B. No. 220, Kanpur.
" Industrial Tribunal, Punjab, Bhandrath Road, Jullundur City.
" Labour Commissioner, Assam, Shillong.
" Chief Commissioner, Delhi (2 copies).
" Labour Commissioner, Punjab, Seth Pochardas Buildings, Nicholson Road, Ambala Cantonment.
" Director of Industries and Labour, Delhi.
" Chief Commissioner, Ajmer (3 copies).
" Chief Commissioner, Coorg (3 copies).

To the Chief Secretary to the Government of Hyderabad, Hyderabad (Deccan) (3 copies).
" the Chief Secretary to the Government of Mysore, Bangalore (3 copies).
" the Chief Secretary to the Government of Sourashtra, Rajkot (3 copies).
" the Chief Secretary to the Government of Travancore and Cochin, Trivandrum (5 copies).
" the Chief Secretary to the Government of Rajasthan, Jaipur (3 copies).
" the Chief Secretary, Patiala and East Punjab States Union Government, Patiala (3 copies).
" the Principal Secretary, Government of Jammu and Kashmir, Srinagar (3 copies).
" the Registrar, Labour Appellate Tribunal, City Ice Building, 4th Flour, 298, Bazaar Gate Street, Bombay (6 copies).
" Sri R. Venkataraman, M.A., B.L., No. 1/174, High Road, Royapetta, Madras.
" the Regional Labour Commissioner (Central), First Floor, Flat No. 12, Khaleeli Mansions, Mount Road, Madras.
" the Director-General, International Labour Organization, Geneva.
" the Regional Director of Resettlement and Employment, Cathedral P.O., Madras.
" the Chief Commissioner, Kutch, Bhuj (3 copies).
" the Chief Commissioner, Bhopal, Bhopal (3 copies).
" the Chief Commissioner, Bilaspur (Simla Hills) (3 copies).
" the Chief Commissioner, Vindhya Pradesh, Reva (3 copies).
" the Chief Commissioner, Manipur, Imphal (3 copies).
" the Chief Commissioner, Tripura, Agartala (3 copies).
" the Chief Commissioner, Himachal Pradesh, Simla (3 copies).

DEVELOPMENT DEPARTMENT

G.O. No. 725, 16th February 1951

Labour—Disputes—Dispute between the workers and the management of the Commonwealth Tile Factory, Kudroli, Mangalore—Award of the Industrial Tribunal, Coimbatore—Published.

READ—the following papers :—

I

G.O. Ms. No. 1315, Development, dated 31st March 1950.

II

From the Industrial Tribunal, Coimbatore, dated 9th February 1951, *No. I.D.* 8 of 1950.

BEFORE THE INDUSTRIAL TRIBUNAL, COIMBATORE.

PRESENT:

SRI P. V. KRISHNASWAMI, B.A., B.L.,
Industrial Tribunal.

INDUSTRIAL DISPUTE No. 8 OF 1950.

[In the matter of the dispute between the workers and the Management of the Commonwealth Tile Factory, Kudroli, Mangalore (vide G.O. Ms. No. 1315, Development, dated 31st March 1950.)]

Messrs. M. S. Menon, M.A., Bar.-at-Law and G. B. Pai, M.A., B.L., Advocates, Ernakulam—*For the management.*

SRI B. S. Bhaskar Rai, B.A., B.L., Advocate and President, Commonwealth Tile Factory Workers' Union, Kudroli, Mangalore—*For the workers.*

AWARD.

Reference to adjudicate whether the dismissal of Sri Omaya Poojari and Sri Daniel Prabhakar by their employer, the Commonwealth Tile Factory, Kudroli, Mangalore, was justified and if not, whether they should be reinstated.

1. The two workers are represented by their Union whose President Sri Bhaskar Rai, Advocate, has appeared for them now as at all earlier stages.

2. Both the parties were asked to file a full and clear statement of their case by 26th April 1950. On 24th April 1950, the President of the Union filed the statement on behalf of the Workers' Union and it is safe to say that it mentions nothing with regard to the impropriety, illegality or unjustifiability of the dismissals of the two employees in question. It runs into four pages and many paragraphs dealing mainly with the reinstatement of some other workmen dismissed before a strike, the wages for the strike period, an increase in the basic pay and dearness allowance, bonus, amenities to women workers, the difficulties of sweepers, the inconvenience felt at the racks and at the fire departments, skilled workers, clay stackers and holidays. It makes no reference whatever to these two employees in particular.

3. The employer's counsel obtained an extension of time to file his written statement. It is dated 9th May 1950, and urges that the two workmen were dismissed with effect from 14th October 1949 for wilful insubordination and refusal to carry out the lawful and reasonable orders of the Factory Manager; they had been given a charge-sheet in writing and afforded an opportunity to explain. They had been suspended on a prior occasion for misconduct and the same was taken into consideration in awarding a punishment to them, viz., dismissal. It is imperative in the interests of discipline inside the factory.

4. My learned Predecessor framed the following issue and communicated it to both parties:—

(1) Whether the two workmen, viz., Sri Omaya Poojari and Sri Daniel Prabhakar were dismissed on just and proper grounds and after due enquiry and if not should they be reinstated or given any other relief?

5. The advocates for the employer urged by a letter, dated 22nd May 1950, for the deletion from the issue of the words "if not whether they should be reinstated". On 3rd June 1950, the President of the Union wrote that the Workers' Union had not received till then the terms of the reference to the Tribunal and that "if the terms of the reference is only regarding the dismissal of two workers, the adjudication will be of little use to them." They had represented to the Labour Commissioner that their grievances should be redressed in the matter of wages; that a copy of the terms of reference should be forwarded to them, that issues should be framed regarding increase in basic wages, etc., that the matter should be taken up with Government regarding the terms of the reference. A reply was sent that issues can be and have been framed only on the terms of the reference and at best can be only germane to the points involved therein. No further statement was filed nor was leave asked therefor.

6. On 8th July 1950, the Tribunal received from the President of the Workers' Union a copy of a letter, dated 5th July 1950, addressed by him to the Commissioner of Labour. It complained that though he had laid specific stress on the question of increase of wages, to bring it on a par with the wages in other factories in Mangalore, the Commissioner of Labour seemed "to have referred only the matter of dismissal of two workers to the Industrial Tribunal." He added, "I am afraid we cannot be a party to such references and I have already intimated the facts to the Tribunal with copies to you and the Hon'ble Minister for Labour. Otherwise we will be wasting unnecessarily State's money on the present reference."

7. Notwithstanding all the foregoing the two employees have by their counsel participated now in the enquiry, cross-examined the four witnesses for the employer and have examined themselves.

8. The employer relies upon Exhibits M-1 to M-14 while the workmen rely on Exhibits W-1 to W-5. Exhibit M-9, dated 13th October 1949, from Mr. Hopkins (management's witness No. 4) to Mr. Fowler, the then General Group Manager, who has since retired from service sets out the incidents leading to the dismissal of these two workmen. It states that No. 1 press had not started work at 8 o'clock that morning due to pallets being not available that morning. To these two tile receivers of No. 1 press, it was pointed out that a big stock of pallets had accumulated at the press immediately opposite and that the same could be used. After some hesitation the workmen had the pallets transferred but 15 minutes production time was lost. Mr. Hopkins then informed these two workmen through the head fitter, Benjamin Maben (management's witness No. 2) that he wished to see them in his office at their break time, 9-30 a.m. Exhibit M-9 continues "they replied to the effect that if I wanted to convey anything to them I should do so through their vakil presumably Bhaskar Rai now the Union Secretary. At 9-30 I sent out for them but again they refused to come to the office giving the same reason as before." These two workers had given trouble previously and had been suspended for three days in May 1949, with a final warning in writing. Mr. Hopkins recommended adoption of strong and stern measures to suppress such acts of insubordination lest they should assume impossible proportions. He attributed the non-co-operative attitude existing amongst the press room people to their chagrin at the installation of mechanical belt conveyers to carry pallets thereby minimizing human labour and head-loads.

9. Thus addressed by Exhibit M-9, Mr. Fowler, the Group Manager addressed the very next day, 14th October 1949, Mr. Kruger who was acting General Manager at Kozhikode during the absence of Mr. Burnett (M.W. 1) on leave. Exhibit M-4 taken with the other correspondence to be adverted to explains what took place on 14th October 1949 and after. It refers to instructions by telephone by Mr. Kruger to Mr. Fowler on the 13th October agreeably to which Mr. Fowler issued on 14th October 1949, Exhibits W-1 and W-2 to Omaya Poojari and Daniel Prabhakar informing them that it had been brought to his notice that each of them had been guilty of wilful insubordination and disobedience to lawful orders of their Manager on 13th October 1949 and that they were thereby given an opportunity to explain their case to Mr. Fowler at 4 p.m. that day at his office.

10. At 4 p.m. both these workmen appeared before Mr. Fowler and he took down their joint explanation referred to and set out in Exhibit M-4 in detail. They told him that No. 1 press had not worked on the afternoon of 12th October

and when they came to work on 13th morning, there were no pallets to work No. 1 press. The Manager (Mr. Hopkins) instructed them to get pallets from No. 4 press where they were available. They got them for No. 1 press. Omaya Poojari first told Mr. Fowler that this was at 8-15 a.m. but was corrected by Daniel Prabhakar into 7-45. They took about 30 pallets but did not start work. He does not know the time but it was before 8 o'clock. He was told by Mr. Hopkins through the head fitter as interpreter to come to the office at 9-30 a.m. but they replied they will not do so since some time earlier they had told the press maistri that they wanted to see the Manager; the Manager Mr. Hopkins had then replied that there was no necessity. They then had wished to see the Manager in regard to the working at the mechanical conveyors and at the time of their request to see the Manager work had been stopped at the factory. At 9-30 a.m. on the 13th, they were again asked by the head fitter to see the Manager and again they refused for the same reason as before. They made a final statement that the vakil who is in charge of the Union may be asked about them. Finally they both refused to sign their explanation which was however attested by the interpreter (head clerk) Karkada, M.W. 3, and the head maistri B. Mohamed. Mr. Fowler himself has written the original entirely in his own handwriting. He thereupon considered that there was sufficient justification to order their dismissal relying upon rule 22 (*a*) of their Standing Orders and therefore passed an order of dismissal evidenced by Exhibits M-7 and M-8 on the 14th October 1949. The original orders of dismissal were handed over to them and the terms thereof were interpreted by the head clerk in the presence of the head maistri and Mr. Hopkins. Mr. Maben, the head fitter has also now been examined with regard to the incidents on the morning of the 13th and corroborates Mr. Hopkins and Exhibit M-9.

11. Sri Maben as M.W. 2 proves his statement, Exhibit M-3, dated 14th October 1949. Maben states there that when Mr. Hopkins directed the tile receivers, viz., Omaya Poojari and Daniel Prabhakar to arrange to take the pallets from No. 4 press they took the whole thing as a joke and did not act. Mr. Hopkins directs Sri Maben to inform these two workmen to see him in his office at 9-30 a.m. but when Sri Maben told them so they replied "the Manager need not talk to us and if he wants anything, he can do so through our vakil." At 9-30 a.m. when he asked these workmen to go to the Manager they gave the same reply.

12. It is necessary now to advert to certain prior incidents which find reference in these letters and have been now spoken to in detail by Mr. Hopkins. He installed mechanical conveyers in that factory in the first week of September 1949 and the labourers were antogonistic to such an innovation and stopped work on 3rd September 1949. A deputation wanted to see him but he refused to receive the deputation since the Standing Orders of the factory did not permit an interview of that nature when men had struck work. Since on that occasion, Mr. Hopkins refused to receive the men among whom were these Omaya Poojari and Daniel Prabhakar, the incident of 13th October more than a month later arose. They refused to remove the pallets as if to express their derision at the mechanical conveyor. They refused to obey the call of the Manager to his office because the Manager had on 3rd September 1949 refused to receive a deputation of theirs.

13. After this dismissal on 14th October 1949, Mr. Bhaskar Rai would appear to have received a letter, dated 25th November 1949, from the General Manager and it is referred to in Exhibit M-1 wherein the Labour Officer, Kozhikode, on 30th November 1949, requested the General Manager to let him know the circumstances under which the two workers were removed from service. The General Manager's reply, dated 30th November 1949, to the Labour Officer is Exhibit M-2. Subsequent negotiations failed since the employer felt that any reinstatement of these men would grossly impair discipline and output.

14. On 24th December 1949, Mr. Bhaskar Rai, on behalf of the Union gave the General Manager a notice of strike setting out a demand for redress over 26 items the first being the dismissal of these two workmen. Exhibit W-5 is the reply of the General Manager refusing to restore these two men and replying to all the other items. The question is whether in view of the foregoing these two workmen were dismissed illegally.

15. Sri Omaya Poojari as W.W. 1 has admitted that because Mr. Hopkins had refused to receive the workmen ten days earlier, he and Prabhakar refused to see him on the date in question. Daniel Prabhakar as W.W. 2 has also admitted that Mr. Hopkins had refused to receive them earlier when they wanted to see him to express their grievances and that is one of the reasons why he did not obey Mr. Hopkin's call to the office on 13th October 1949 though he knew that according to the rules he was bound to comply.

16. If the matter stood there, there is absolutely no case for the workmen. To order their reinstatement would be against all interests and would be upholding contumacious insolence and impudent insubordination. The matter however has been complicated by new pleas being advanced for the first time after this enquiry began. Comment has been already made upon the statement filed on behalf of these two workmen in this case. It does not refer to any of the circumstances leading to their dismissal, to offer any explanation or excuse. In such circumstances, normally in a Court of Law, they would not be permitted to put forward any case not specifically pleaded but allowing some latitude for their alleged illiteracy and their allegations that they had entrusted their entire case to their President and counsel. I permitted them to state whatever they wanted to urge. The result had been that they made personal allegations against Mr. Hopkins to the effect that he used to treat them in an unhuman fashion threatening them with a stick. During his deposition Omaya Poojari has stated that on 13th October 1949 he was pushed by Mr. Hopkins while Daniel Prabhakar who did not corroborate Omaya Poojari has added that Mr. Hopkins waved a stick or cane at him. It is significant that at no time earlier during the history of these disputes was this obvious afterthought of a story put forward. When the President of their Union issued a notice of strike he did not refer to this. When these men were examined by Mr. Fowler on the very next day they did not tell him anything about these matters though they concede that Mr. Fowler is a good man against whom they have nothing to urge. Yet again when the Labour Officer went into these matters they did not put forward this story of Mr. Hopkins going about with a stick to frighten these men. This concoction has to be dismissed straightaway as ridiculous.

17. Again it had been suggested during trial that the head fitter Sri Maben did not interpret properly what Mr. Hopkins told the workmen and vice versa. Similar aspersions have been made against Mr. Fowler's record of the statement of these men on 14th October 1949. These aspersions had not been put forward on any earlier stage during these disputes and are not entitled to any acceptance. Mr. Hopkins has denied that he went about with a stick to wave the same at his workmen or to indicate any semblance of violence towards them. To the same effect is the evidence of Sri Maben the head fitter and Sri Karkada, the head clerk. In fact it is obvious that it had been realized during the earlier stages following this reference that these two workmen who have found employment elsewhere had no case whatever, because their President's letter to this Tribunal and to the Labour Commissioner would justify no other conclusion.

18. For all the foregoing reasons I hold and find that these two workmen were rightly dismissed on just and proper grounds and after due enquiry and that the same is fully justified. No question of reinstatement or other relief arises.

Coimbatore, 3rd February 1951.

P. V. KRISHNASWAMI,
Industrial Tribunal.

Order—No. 725, Development, dated 16th February 1951.

Whereas the award of the Industrial Tribunal, Coimbatore, in respect of the industrial dispute between the workers and the management of the Commonwealth Tile Factory, Kudroli, Mangalore, has been received;

Now, therefore, in exercise of the powers conferred by section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), His Excellency the Governor of Madras hereby directs that the said award be published in the *Fort St. George Gazette.*

(By order of His Excellency the Governor)

J. M. LOBO PRABHU,
Secretary to Government.

To the Superintendent, Government Press, for publication.
" Commissioner of Labour (20 copies).
" Industrial Tribunal, Coimbatore.
" Management of the Commonwealth Tile Factory, Kudroli, Mangalore.
" Secretary, Commonwealth Tile Factory Workers' Union, Kudroli, Mangalore.
" District Magistrate of South Kanara.

To the Industrial Tribunal (I), High Court Buildings, Madras.
" Industrial Tribunal (II), Block No. XIV, Fort St. George, Madras.
" Industrial Tribunal, Madurai.
" Industrial Tribunal, Vijayavada at Guntur.
" Secretary to the Government of India, Ministry of Labour, New Delhi (10 copies).

No. 725, DEVELOPMENT, 16TH FEBRUARY 1951

To the Secretary to the Government of Bihar, Labour Department, Patna.
" Secretary to the Government of Bombay, Labour and Housing Department, Bombay.
" Secretary to the Government of West Bengal, Labour Department, Calcutta (2 copies).
" Secretary to the Government of Orissa, Commerce and Labour Department, Cuttack (3 copies).
" Secretary to the Government of Uttar Pradesh, Labour Department, Lucknow (2 copies).
" Secretary to the Government of Madhya Pradesh, Labour Department, Nagpur (3 copies).
" Chief Secretary to the Government of Assam, General and Judicial Department, Shillong (3 copies).
" Commissioner of Labour and Employment, Patna.
" Chairman, Industrial Tribunal, Bihar, Jamshedpur.
" Deputy Commissioner of Labour (Information), Civil Secretariat Buildings, Fort, Bombay.
" Registrar of Industrial Courts, Bombay (2 copies).
" Commissioner of Labour, West Bengal, Calcutta.
" Labour Commissioner, Uttar Pradesh, P.B. No. 220, Kanpur.
" Industrial Tribunal, Punjab, Bhandrath Road, Jullundur City.
" Labour Commissioner, Assam, Shillong.
" Chief Commissioner, Delhi (2 copies).
" Labour Commissioner, Punjab, Seth Pochardas Buildings, Nicholson Road, Ambala Cantonment.
" Director of Industries and Labour, Delhi.
" Chief Commissioner, Ajmer (3 copies).
" Chief Commissioner, Coorg (3 copies).

To the Chief Secretary to the Government of Hyderabad, Hyderabad (Deccan) (3 copies).
" the Chief Secretary to the Government of Mysore, Bangalore (3 copies).
" the Chief Secretary to the Government of Sourashtra, Rajkot (3 copies).
" the Chief Secretary to the Government of Travancore and Cochin, Trivandrum (5 copies).
" the Chief Secretary to the Government of Rajasthan, Jaipur (3 copies).
" the Chief Secretary, Patiala and East Punjab States Union Government, Patiala (3 copies).
" the Principal Secretary, Government of Jammu and Kashmir, Srinagar (3 copies).
" the Registrar, Labour Appellate Tribunal, City Ice Building, 4th Flour, 298, Bazaar Gate Street, Bombay (6 copies).
" Sri R. Venkataraman, M.A., B.L., No. 1/174, High Road, Royapetta, Madras.
" the Regional Labour Commissioner (Central), First Floor, Flat No. 12, Khaleeli Mansions, Mount Road, Madras.
" the Director-General, International Labour Organization, Geneva.
" the Regional Director of Resettlement and Employment, Cathedral P.O., Madras.
" the Chief Commissioner, Kutch, Bhuj (3 copies).
" the Chief Commissioner, Bhopal, Bhopal (3 copies).
" the Chief Commissioner, Bilaspur (Simla Hills) (3 copies).
" the Chief Commissioner, Vindhya Pradesh, Reva (3 copies).
" the Chief Commissioner, Manipur, Imphal (3 copies).
" the Chief Commissioner, Tripura, Agartala (3 copies).
" the Chief Commissioner, Himachal Pradesh, Simla (3 copies).

Forwarded to the

(By order)

Superintendent.

DEVELOPMENT DEPARTMENT

G.O. No. 725, 16th February 1951

Labour—Disputes—Dispute between the workers and the management of the Commonwealth Tile Factory, Kudroli, Mangalore—Award of the Industrial Tribunal, Coimbatore—Published.

READ—the following papers :—

I

G.O. Ms. No. 1315, Development, dated 31st March 1950.

II

From the Industrial Tribunal, Coimbatore, dated 9th February 1951, No. I.D. 8 of 1950.

BEFORE THE INDUSTRIAL TRIBUNAL, COIMBATORE.

PRESENT:

SRI P. V. KRISHNASWAMI, B.A., B.L.,
Industrial Tribunal.

INDUSTRIAL DISPUTE No. 8 OF 1950.

[In the matter of the dispute between the workers and the Management of the Commonwealth Tile Factory, Kudroli, Mangalore (vide G.O. Ms. No. 1315, Development, dated 31st March 1950.)]

Messrs. M. S. Menon, M.A., Bar.-at-Law and G. B. Pai, M.A., B.L., Advocates, Ernakulam—*For the management.*

SRI B. S. Bhaskar Rai, B.A., B.L., Advocate and President, Commonwealth Tile Factory Workers' Union, Kudroli, Mangalore—*For the workers.*

AWARD.

Reference to adjudicate whether the dismissal of Sri Omaya Poojari and Sri Daniel Prabhakar by their employer, the Commonwealth Tile Factory, Kudroli, Mangalore, was justified and if not, whether they should be reinstated.

1. The two workers are represented by their Union whose President Sri Bhaskar Rai, Advocate, has appeared for them now as at all earlier stages.

2. Both the parties were asked to file a full and clear statement of their case by 26th April 1950. On 24th April 1950, the President of the Union filed the statement on behalf of the Workers' Union and it is safe to say that it mentions nothing with regard to the impropriety, illegality or unjustifiability of the dismissals of the two employees in question. It runs into four pages and many paragraphs dealing mainly with the reinstatement of some other workmen dismissed before a strike, the wages for the strike period, an increase in the basic pay and dearness allowance, bonus, amenities to women workers, the difficulties of sweepers, the inconvenience felt at the racks and at the fire departments, skilled workers, clay stackers and holidays. It makes no reference whatever to these two employees in particular.

3. The employer's counsel obtained an extension of time to file his written statement. It is dated 9th May 1950, and urges that the two workmen were dismissed with effect from 14th October 1949 for wilful insubordination and refusal to carry out the lawful and reasonable orders of the Factory Manager; they had been given a charge-sheet in writing and afforded an opportunity to explain. They had been suspended on a prior occasion for misconduct and the same was taken into consideration in awarding a punishment to them, viz., dismissal. It is imperative in the interests of discipline inside the factory.

4. My learned Predecessor framed the following issue and communicated it to both parties:—

(1) Whether the two workmen, viz., Sri Omaya Poojari and Sri Daniel Prabhakar were dismissed on just and proper grounds and after due enquiry and if not should they be reinstated or given any other relief?

5. The advocates for the employer urged by a letter, dated 22nd May 1950, for the deletion from the issue of the words "if not whether they should be reinstated". On 3rd June 1950, the President of the Union wrote that the Workers' Union had not received till then the terms of the reference to the Tribunal and that "if the terms of the reference is only regarding the dismissal of two workers, the adjudication will be of little use to them." They had represented to the Labour Commissioner that their grievances should be redressed in the matter of wages, that a copy of the terms of reference should be forwarded to them, that issues should be framed regarding increase in basic wages, etc., that the matter should be taken up with Government regarding the terms of the reference. A reply was sent that issues can be and have been framed only on the terms of the reference and at best can be only germane to the points involved therein. No further statement was filed nor was leave asked therefor.

6. On 8th July 1950, the Tribunal received from the President of the Workers' Union a copy of a letter, dated 5th July 1950, addressed by him to the Commissioner of Labour. It complained that though he had laid specific stress on the question of increase of wages, to bring it on a par with the wages in other factories in Mangalore, the Commissioner of Labour seemed "to have referred only the matter of dismissal of two workers to the Industrial Tribunal." He added, "I am afraid we cannot be a party to such references and I have already intimated the facts to the Tribunal with copies to you and the Hon'ble Minister for Labour. Otherwise we will be wasting unnecessarily State's money on the present reference."

7. Notwithstanding all the foregoing the two employees have by their counsel participated now in the enquiry, cross-examined the four witnesses for the employer and have examined themselves.

8. The employer relies upon Exhibits M-1 to M-14 while the workmen rely on Exhibits W-1 to W-5. Exhibit M-9, dated 13th October 1949, from Mr. Hopkins (management's witness No. 4) to Mr. Fowler, the then General Group Manager, who has since retired from service sets out the incidents leading to the dismissal of these two workmen. It states that No. 1 press had not started work at 8 o'clock that morning due to pallets being not available that morning. To these two tile receivers of No. 1 press, it was pointed out that a big stock of pallets had accumulated at the press immediately opposite and that the same could be used. After some hesitation the workmen had the pallets transferred but 15 minutes production time was lost. Mr. Hopkins then informed these two workmen through the head fitter, Benjamin Maben (management's witness No. 2) that he wished to see them in his office at their break time, 9-30 a.m. Exhibit M-9 continues "they replied to the effect that if I wanted to convey anything to them I should do so through their vakil presumably Bhaskar Rai now the Union Secretary. At 9-30 I sent out for them but again they refused to come to the office giving the same reason as before." These two workers had given trouble previously and had been suspended for three days in May 1949 with a final warning in writing. Mr. Hopkins recommended adoption of strong and stern measures to suppress such acts of insubordination lest they should assume impossible proportions. He attributed the non-co-operative attitude existing amongst the press room people to their chagrin at the installation of mechanical belt conveyers to carry pallets thereby minimizing human labour and head-loads.

9. Thus addressed by Exhibit M-9, Mr. Fowler, the Group Manager addressed the very next day, 14th October 1949, Mr. Kruger who was acting General Manager at Kozhikode during the absence of Mr. Burnett (M.W. 1) on leave. Exhibit M-4 taken with the other correspondence to be adverted to explains what took place on 14th October 1949 and after. It refers to instructions by telephone by Mr. Kruger to Mr. Fowler on the 13th October agreeably to which Mr. Fowler issued on 14th October 1949, Exhibits W-1 and W-2 to Omaya Poojari and Daniel Prabhakar informing them that it had been brought to his notice that each of them had been guilty of wilful insubordination and disobedience to lawful orders of their Manager on 13th October 1949 and that they were thereby given an opportunity to explain their case to Mr. Fowler at 4 p.m. that day at his office.

10. At 4 p.m. both these workmen appeared before Mr. Fowler and he took down their joint explanation referred to and set out in Exhibit M-4 in detail. They told him that No. 1 press had not worked on the afternoon of 12th October

and when they came to work on 13th morning, there were no pallets to work No. 1 press. The Manager (Mr. Hopkins) instructed them to get pallets from No. 4 press where they were available. They got them for No. 1 press. Omaya Poojari first told Mr. Fowler that this was at 8-15 a.m. but was corrected by Daniel Prabhakar into 7-45. They took about 30 pallets but did not start work. He does not know the time but it was before 8 o'clock. He was told by Mr. Hopkins through the head fitter as interpreter to come to the office at 9-30 a.m. but they replied they will not do so since some time earlier they had told the press maistri that they wanted to see the Manager; the Manager Mr. Hopkins had then replied that there was no necessity. They then had wished to see the Manager in regard to the working at the mechanical conveyors and at the time of their request to see the Manager work had been stopped at the factory. At 9-30 a.m. on the 13th, they were again asked by the head fitter to see the Manager and again they refused for the same reason as before. They made a final statement that the vakil who is in charge of the Union may be asked about them. Finally they both refused to sign their explanation which was however attested by the interpreter (head clerk) Karkada, M.W. 3, and the head maistri B. Mohamed. Mr. Fowler himself has written the original entirely in his own handwriting. He thereupon considered that there was sufficient justification to order their dismissal relying upon rule 22 (*a*) of their Standing Orders and therefore passed an order of dismissal evidenced by Exhibits M-7 and M-8 on the 14th October 1949. The original orders of dismissal were handed over to them and the terms thereof were interpreted by the head clerk in the presence of the head maistri and Mr. Hopkins. Mr. Maben, the head fitter has also now been examined with regard to the incidents on the morning of the 13th and corroborates Mr. Hopkins and Exhibit M-9.

11. Sri Maben as M.W. 2 proves his statement, Exhibit M-3, dated 14th October 1949. Maben states there that when Mr. Hopkins directed the tile receivers, viz., Omaya Poojari and Daniel Prabhakar to arrange to take the pallets from No. 4 press they took the whole thing as a joke and did not act. Mr. Hopkins directs Sri Maben to inform these two workmen to see him in his office at 9-30 a.m. but when Sri Maben told them so they replied "the Manager need not talk to us and if he wants anything, he can do so through our vakil." At 9-30 a.m. when he asked these workmen to go to the Manager they gave the same reply.

12. It is necessary now to advert to certain prior incidents which find reference in these letters and have been now spoken to in detail by Mr. Hopkins. He installed mechanical conveyers in that factory in the first week of September 1949 and the labourers were antogonistic to such an innovation and stopped work on 3rd September 1949. A deputation wanted to see him but he refused to receive the deputation since the Standing Orders of the factory did not permit an interview of that nature when men had struck work. Since on that occasion, Mr. Hopkins refused to receive the men among whom were these Omaya Poojari and Daniel Prabhakar, the incident of 13th October more than a month later arose. They refused to remove the pallets as if to express their derision at the mechanical conveyor. They refused to obey the call of the Manager to his office because the Manager had on 3rd September 1949 refused to receive a deputation of theirs.

13. After this dismissal on 14th October 1949, Mr. Bhaskar Rai would appear to have received a letter, dated 25th November 1949, from the General Manager and it is referred to in Exhibit M-1 wherein the Labour Officer, Kozhikode, on 30th November 1949, requested the General Manager to let him know the circumstances under which the two workers were removed from service. The General Manager's reply, dated 30th November 1949, to the Labour Officer is Exhibit M-2. Subsequent negotiations failed since the employer felt that any reinstatement of these men would grossly impair discipline and output.

14. On 24th December 1949, Mr. Bhaskar Rai, on behalf of the Union gave the General Manager a notice of strike setting out a demand for redress over 26 items the first being the dismissal of these two workmen. Exhibit W-5 is the reply of the General Manager refusing to restore these two men and replying to all the other items. The question is whether in view of the foregoing these two workmen were dismissed illegally.

15. Sri Omaya Poojari as W.W. 1 has admitted that because Mr. Hopkins had refused to receive the workmen ten days earlier, he and Prabhakar refused to see him on the date in question. Daniel Prabhakar as W.W. 2 has also admitted that Mr. Hopkins had refused to receive them earlier when they wanted to see him to express their grievances and that is one of the reasons why he did not obey Mr. Hopkin's call to the office on 13th October 1949 though he knew that according to the rules he was bound to comply.

16. If the matter stood there, there is absolutely no case for the workmen. To order their reinstatement would be against all interests and would be upholding contumacious insolence and impudent insubordination. The matter however has been complicated by new pleas being advanced for the first time after this enquiry began. Comment has been already made upon the statement filed on behalf of these two workmen in this case. It does not refer to any of the circumstances leading to their dismissal, to offer any explanation or excuse. In such circumstances, normally in a Court of Law, they would not be permitted to put forward any case not specifically pleaded but allowing some latitude for their alleged illiteracy and their allegations that they had entrusted their entire case to their President and counsel. I permitted them to state whatever they wanted to urge. The result had been that they made personal allegations against Mr. Hopkins to the effect that he used to treat them in an unhuman fashion threatening them with a stick. During his deposition Omaya Poojari has stated that on 13th October 1949 he was pushed by Mr. Hopkins while Daniel Prabhakar who did not corroborate Omaya Poojari has added that Mr. Hopkins waved a stick or cane at him. It is significant that at no time earlier during the history of these disputes was this obvious afterthought of a story put forward. When the President of their Union issued a notice of strike he did not refer to this. When these men were examined by Mr. Fowler on the very next day they did not tell him anything about these matters though they concede that Mr. Fowler is a good man against whom they have nothing to urge. Yet again when the Labour Officer went into these matters they did not put forward this story of Mr. Hopkins going about with a stick to frighten these men. This concoction has to be dismissed straightaway as ridiculous.

17. Again it had been suggested during trial that the head fitter Sri Maben did not interpret properly what Mr. Hopkins told the workmen and vice versa. Similar aspersions have been made against Mr. Fowler's record of the statement of these men on 14th October 1949. These aspersions had not been put forward on any earlier stage during these disputes and are not entitled to any acceptance. Mr. Hopkins has denied that he went about with a stick to wave the same at his workmen or to indicate any semblance of violence towards them. To the same effect is the evidence of Sri Maben the head fitter and Sri Karkada, the head clerk. In fact it is obvious that it had been realized during the earlier stages following this reference that these two workmen who have found employment elsewhere had no case whatever, because their President's letter to this Tribunal and to the Labour Commissioner would justify no other conclusion.

18. For all the foregoing reasons I hold and find that these two workmen were rightly dismissed on just and proper grounds and after due enquiry and that the same is fully justified. No question of reinstatement or other relief arises.

Coimbatore,
3rd February 1951.

P. V. KRISHNASWAMI,
Industrial Tribunal.

Order—No. 725, Development, dated 16th February 1951.

Whereas the award of the Industrial Tribunal, Coimbatore, in respect of the industrial dispute between the workers and the management of the Commonwealth Tile Factory, Kudroli, Mangalore, has been received;

Now, therefore, in exercise of the powers conferred by section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), His Excellency the Governor of Madras hereby directs that the said award be published in the *Fort St. George Gazette.*

(By order of His Excellency the Governor)

J. M. LOBO PRABHU,
Secretary to Government.

To the Superintendent, Government Press, for publication.
.. Commissioner of Labour (20 copies).
Industrial Tribunal, Coimbatore.
Management of the Commonwealth Tile Factory, Kudroli, Mangalore.
Secretary, Commonwealth Tile Factory Workers' Union, Kudroli, Mangalore.
District Magistrate of South Kanara.

To the Industrial Tribunal (I), High Court Buildings, Madras.
,, Industrial Tribunal (II), Block No. XIV, Fort St. George, Madras.
,, Industrial Tribunal, Madurai.
,, Industrial Tribunal, Vijayavada at Guntur.
,, Secretary to the Government of India, Ministry of Labour, New Delhi (10 copies).

To the Secretary to the Government of Bihar, Labour Department, Patna.
" Secretary to the Government of Bombay, Labour and Housing Department, Bombay.
" Secretary to the Government of West Bengal, Labour Department, Calcutta (2 copies).
" Secretary to the Government of Orissa, Commerce and Labour Department, Cuttack (3 copies).
" Secretary to the Government of Uttar Pradesh, Labour Department, Lucknow (2 copies).
" Secretary to the Government of Madhya Pradesh, Labour Department, Nagpur (3 copies).
" Chief Secretary to the Government of Assam, General and Judicial Department, Shillong (3 copies).
" Commissioner of Labour and Employment, Patna.
" Chairman, Industrial Tribunal, Bihar, Jamshedpur.
" Deputy Commissioner of Labour (Information), Civil Secretariat Buildings, Fort, Bombay.
" Registrar of Industrial Courts, Bombay (2 copies).
" Commissioner of Labour, West Bengal, Calcutta.
" Labour Commissioner, Uttar Pradesh, P.B. No. 220, Kanpur.
" Industrial Tribunal, Punjab, Bhandrath Road, Jullundur City.
" Labour Commissioner, Assam, Shillong.
" Chief Commissioner, Delhi (2 copies).
" Labour Commissioner, Punjab, Seth Pochardas Buildings, Nicholson Road, Ambala Cantonment.
" Director of Industries and Labour, Delhi.
" Chief Commissioner, Ajmer (3 copies).
" Chief Commissioner, Coorg (3 copies).

To the Chief Secretary to the Government of Hyderabad, Hyderabad (Deccan) (3 copies).
" the Chief Secretary to the Government of Mysore, Bangalore (3 copies).
" the Chief Secretary to the Government of Sourashtra, Rajkot (3 copies).
" the Chief Secretary to the Government of Travancore and Cochin, Trivandrum (5 copies).
" the Chief Secretary to the Government of Rajasthan, Jaipur (3 copies).
" the Chief Secretary, Patiala and East Punjab States Union Government, Patiala (3 copies).
" the Principal Secretary, Government of Jammu and Kashmir, Srinagar (3 copies).
" the Registrar, Labour Appellate Tribunal, City Ice Building, 4th Flour, 298, Bazaar Gate Street, Bombay (6 copies).
" Sri R. Venkataraman, M.A., B.L., No. 1/174, High Road, Royapetta, Madras.
" the Regional Labour Commissioner (Central), First Floor, Flat No. 12, Khaleeli Mansions, Mount Road, Madras.
" the Director-General, International Labour Organization, Geneva.
" the Regional Director of Resettlement and Employment, Cathedral P.O., Madras.
" the Chief Commissioner, Kutch, Bhuj (3 copies).
" the Chief Commissioner, Bhopal, Bhopal (3 copies).
" the Chief Commissioner, Bilaspur (Simla Hills) (3 copies).
" the Chief Commissioner, Vindhya Pradesh, Reva (3 copies).
" the Chief Commissioner, Manipur, Imphal (3 copies).
" the Chief Commissioner, Tripura, Agartala (3 copies).
" the Chief Commissioner, Himachal Pradesh, Simla (3 copies).

Forwarded to the

(By order)

Superintendent.